

**IN THE UNITED STATE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS,  
DALLAS DIVISION**

MORGAN DAVIS and MELISSA DAVIS as §  
Husband and wife, on behalf of themselves §  
And all others similarly situated, §  
Plaintiffs, §  
§ MDL No. 2098;  
v. § Case No. 03:10-cv-02454-f  
§  
MCGUYER HOMBILDERS, INC., §  
PLANTATION HOMES, and §  
PIONEER HOMES, §  
Defendants. §

---

**APPENDIX TO:**

**OPPOSITION TO PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

---

<b>Exhibit (Page Nos.)</b>	<b>Description of Document</b>
<b>Exhibit 1 (p. 1-8)</b>	Affidavit of Andrew D. Peck in Support of Opposition to Plaintiffs' Motion for Preliminary Approval of Class Action Settlement
<b>Exhibit 2 (pp. 9-251)</b>	Affidavit of Michael C. McKay Peck in Support of Opposition to Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

Respectfully submitted,

MULLIN HOARD & BROWN, LLP

/s/ John G. Turner, III

---

John G. Turner, III (TX Bar No. 20320550)  
Robert R. Bell (TX Bar No. 00787062)  
500 South Taylor, Suite 800, LB# 213  
P.O. Box 31656  
Amarillo, Texas 79120-1656  
Telephone: (806) 372-5050  
Facsimile: (806) 371-6230  
Email: jturner@mhba.com  
Email: rbell@mhba.com

Garrett W. Wotkyns (TX Bar No. 24025726)  
SCHNEIDER WALLACE  
COTTRELL BRAYTON KONECKY LLP  
7702 E. Doubletree Ranch Road, Suite 300  
Scottsdale, Arizona 85258  
Telephone: (480) 607-4368  
Facsimile: (480) 348-3999  
Email: gwotkyns@schneiderwallace.com

Mark A. Chavez  
Nance F. Becker  
Christian Schreiber  
CHAVEZ & GERTLER LLP  
42 Miller Avenue  
Mill Valley, California 94941  
Phone: 415-381-5599  
Fax: 415-381-5572

Brian A. Glasser  
BAILEY & GLASSER LLP  
209 Capitol Street  
Charleston, WV 25301  
Phone: 304-345-6555  
Fax: 304-342-1110

*Attorneys for Objectors*

**CERTIFICATE OF SERVICE**

On the 15<sup>th</sup> day of April, 2011, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. To the extent any party is not signed up for the ECF system, service will be made on that party by U.S. Mail.

/s/ John G. Turner, III

John G. Turner, III

# EXHIBIT “1”

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE: KITEC PLUMBING SYSTEM  
PRODUCTS LIABILITY LITIGATION

§ Case No. 09-md-02098-F  
§  
§  
§

**AFFIDAVIT OF ANDREW D. PECK IN SUPPORT OF OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Andrew D. Peck, being duly sworn, deposes and says:

1. I am a Vice President at Delta Mechanical, Inc. Delta Mechanical is the largest plumbing company in the United States; it specializes in Kitec repiping work, and has been involved in over 30,000 residential repipes. I have been involved in the plumbing industry for 16 years.

2. Delta Mechanical was one of the court-appointed plumbers in the *Quintero v. JPEX, USA*, class action lawsuit in Clark County, Nevada, Case No. A493302; it performed over 4,000 Kitec repipes in Nevada. I am personally involved in helping Nevada class members repipe their homes. I am familiar with the Kitec product used in Nevada, why it is defective, and why it needs to be replaced.

3. Delta Mechanical has inspected homes built by Pulte/Del Webb, Lennar, and other builders for Kitec products. Based on my review of the inspections, I have concluded that many of these homes were built with, and currently contain, the same Kitec products that were removed from Nevada class members' homes and which were subject to the Nevada litigation. For example, I have attached as Exhibit A pictures of Kitec product in an Austin Texas home.

These pictures were taken on April 12, 2011. These Kitec products are the same Kitec products that are being replaced in Nevada.

4. I understand that certain plaintiffs have asked the Court to approve a settlement with IPEX, and have provided estimates for "The average cost for repairing/replacing Kitec Fittings and Pipe" in the United States for certain installation types, including:

- a. Open and accessible Kitec Fitting or Pipe: U.S. \$225 per claim;
- b. Kitec Fittings and Pipe located behind drywall: U.S. \$575 per claim; and
- c. Kitec Fittings and Pipe installed in concrete: U.S. \$850 per claim.

5. I understand that under the terms of the Settlement Agreement, "qualified claimants" will be entitled to the following payment:

- a. Open and accessible Kitec Fittings and Pipe: U.S. \$112.50 per each Kitec Fitting or Pipe that requires repair or replacement (50% of the average cost to repair/replace);
- b. Kitec Fittings and Pipe located behind drywall: U.S. \$287.50 per each Kitec Fitting or Pipe that requires repair or replacement (50% of the average cost to repair/ replace); and
- c. Kitec Fittings and Pipe installed in concrete: U.S. \$425 per each Kitec Fitting or Pipe that requires repair or replacement (50% of the average cost to repair/ replace).

6. These estimates are well below what Delta Mechanical charges to replace Kitec.

For example, Delta Mechanical typically charges \$450 to inspect a home and determine whether the home contains Kitec.

7. Based on my knowledge and experience of the plumbing market, Delta Mechanical's pricing is competitive with other plumbers in the industry who perform similar work. Based on my knowledge and experience, a fair and reasonable estimate to replace all Kitec in a typical home with 15 water fixtures is, including building permit \$7,500.

8. Based on my knowledge and experience, a fair and reasonable estimate to replace a single Kitec fitting that is open and accessible is \$350.

9. Based on my knowledge and experience, a fair and reasonable estimate to replace a single Kitec fitting that is behind drywall may range from \$550 to \$675. Drywall replacements range in price because they may require the removal and replacement of wood framing, and/or customized painting, in addition to the drywall.

10. Based on my knowledge and experience, a fair and reasonable estimate to replace a single Kitec fitting that is in concrete is \$1450.

11. Further, Delta Mechanical is willing to offer a 25 year warranty on all plumbing material and labor. In addition, Delta Mechanical will offer a 2 year warranty on all drywall and paint repairs made. The warranty covers the home, not just the current homeowner, and is transferrable to each subsequent owner over the warranty periods.

12. In my experience, in addition to replacement or repair based on leaks, Kitec plumbing also experiences other problems that require a repair or replacement. For example, pipes that do not leak may still be unsuitable because a process known as dezincification reduces water flow and water pressure in homes with Kitec fittings. Among other things, reduced water flow and water pressure may render certain appliances unusable, or inefficient.

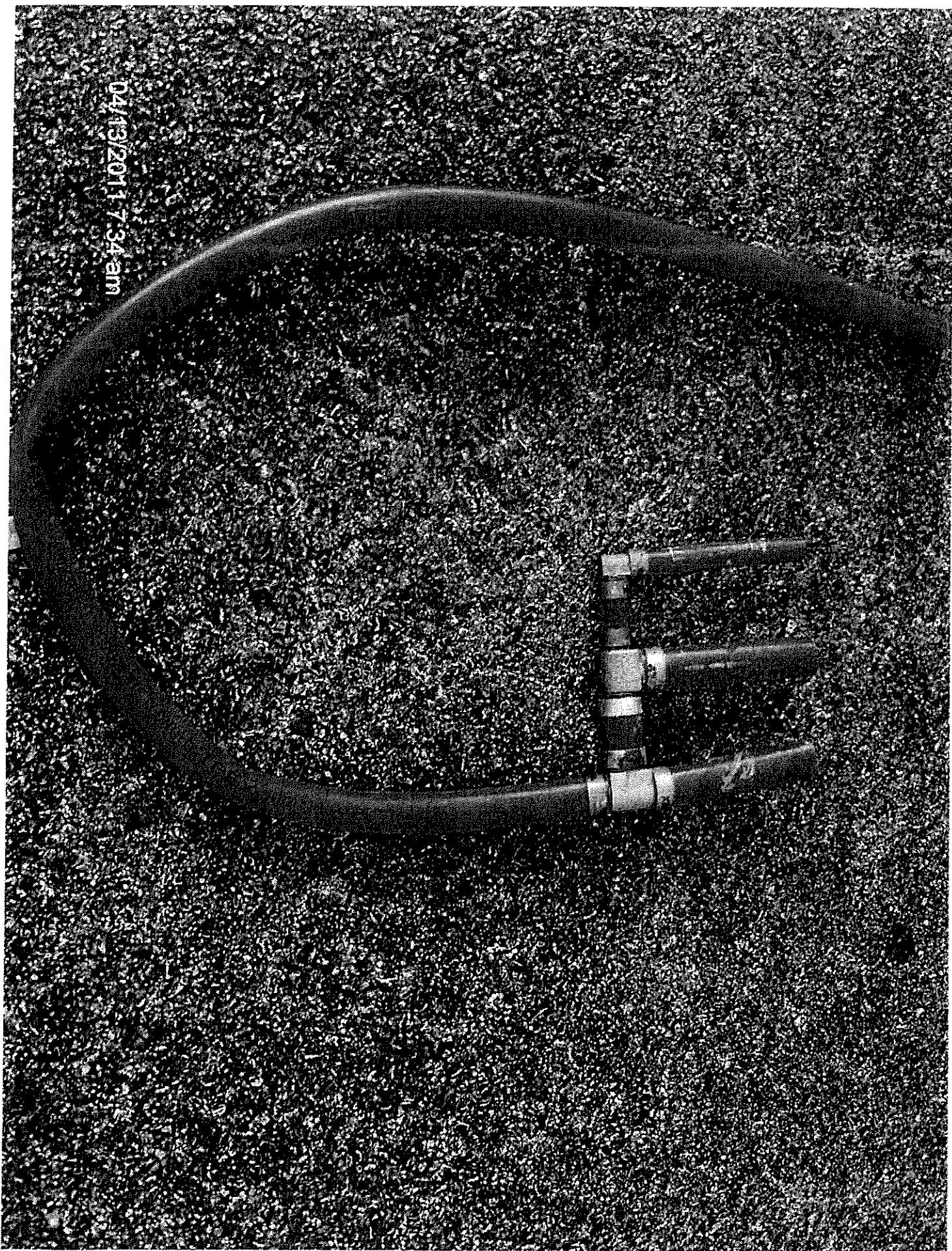
I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct and signed on April 12, 2011 in Scottsdale, Arizona.



---

Andrew D. Peck

# EXHIBIT “A”







04/13/2011 7:31 am

# EXHIBIT “2”

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: KITEC PLUMBING SYSTEM  
PRODUCTS LIABILITY LITIGATION § Case No. 09-md-02098-F

**AFFIDAVIT OF MICHAEL C. MCKAY IN SUPPORT OF OPPOSITION TO  
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT**

I, Michael C. McKay, being duly sworn, deposes and says:

1. I am an attorney at Schneider Wallace Cottrell Brayton Konecky LLP and counsel of record for plaintiffs in this matter. I am a member in good standing of the bar of the state of Arizona and I am admitted *pro hac vice* in this matter. I respectfully submit this affidavit in support of Objections to the Proposed Settlement and Opposition to Motion for Preliminary Approval. Except as otherwise noted, I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

2. In April 2006 a group of Nevada homeowners commenced a class action, *Quintero v. IPEX, USA*, over alleged defective Kitec fittings in Clark County, Nevada (the “Nevada Action”). The Nevada Action included claims against both the manufacturer of the fittings (IPEX), and a myriad of homebuilders who constructed homes with IPEX fittings. The court certified the matter as a class action against both IPEX and the homebuilders. The Order Granting Motion to Certify Class, No. A493302, Oct. 16, 2006, is attached hereto as Exhibit A. The Order Granting Motion to Certify Class required homebuilders to “promptly disclose to Class Plaintiffs the names and addresses of all subdivisions and homes where [IPEX] fittings have been installed.” *Id.* at 2. I understand that this information was necessary for proper notice to be delivered to class members.

3. Class counsel in the Nevada Action established a website to help inform class members about the progress of that case. The website contains information showing that IPEX agreed to a \$90 million settlement, and that numerous homebuilders agreed to settlements in excess of more than \$113 million. A summary of the Nevada Action settlements (as shown on the website established by class counsel) is set forth below.

<u>Settling Party</u>	<u>Settlement Amount</u>
IPEX	\$90,000,000
Richmond American	\$10,243,241
Del Webb	\$23,563,600
Richmond American	\$3,511,483
Developers of NV	\$1,212,359
American Premiere	\$800,000
Astoria	\$3,697,942
Concordia	\$625,000
Plaster Development	\$6,839,484
Platis Construction	\$372,000
RL Homes	\$500,000
SBA Homes	\$222,000
William Lyon Homes	\$516,000
D.R. Horton	\$5,245,000
Desert Wind Homes	\$302,400
Pulte	\$3,437,500
KB Homes	\$5,747,796
Avante Homes	\$6,602,800
KB Homes	\$12,031,524
LBM Homes	\$1,676,400
Nigro Homes	\$2,260,800
Pagentry Homes	\$418,200
Vipor Homes	\$116,000
Sharp Plumbing	\$6,434,593
Richmond American	\$3,750,000
Vipor Homes	\$200,000
KB Homes	\$6,550,000
Sharp Plumbing	\$5,000,000
Kimball Homes	\$458,000
DR Bowles Homes	\$1,278,000
<hr/>	
IPEX total:	\$90,000,000
Homebuilder total:	\$113,612,122
Combined total:	\$203,612,122

4. The website also contains links to a notice of settlement for each of the settlements identified in the preceding paragraph. These notices are attached hereto as Exhibit B.

5. The Nevada \$23,563,600 settlement with Del Webb resolved the claims of 6,617 homeowners for a benefit from Del Webb of about \$3,560 per class member. When added to the compensation separately provided by IPEX to those same homeowners, class members in that case received approximately \$9,100.

6. I, along with a team of other lawyers, represent putative classes of Texas homeowners in the following matters:

- *Davis, et al. v. McGuyer Homebuilders, Inc., Plantation Homes, and Pioneer Homes.* The Davis plaintiffs filed this action in the Travis County, Texas Judicial District on May 12, 2010, on behalf of “all persons, trusts, corporations, partnerships, associations, and/or entities in the State of Texas that own single family homes constructed by Defendants in which Kitec is installed.” The complaint includes claims for product liability, breach of express warranty, breach of implied warranty, and negligence. On June 18, 2010, before answering, McGuyer Homebuilders, Inc. (“MHI”) moved to compel arbitration. The Davis plaintiffs did not challenge the validity of the arbitration provisions in question and agreed to arbitrate their claims. MHI subsequently brought Falcon Plumbing and Construction, Inc. (“Falcon”), the subcontractor who installed the Davis plaintiffs’ defective Kitec systems, into the case. Falcon then sued IPEX, who removed the action. On November 19, 2010, the case was transferred into the MDL for pretrial proceedings.

- *Swets, et al. v. PulteGroup, Inc., Del Webb Texas Limited Partnership.* The Swets plaintiffs initially filed their class action complaint against Pulte Homes, Inc. in the United States District Court for the Eastern District of Michigan (where Pulte is headquartered) on May 14, 2010. The case was dismissed by mutual agreement and plaintiffs initiated an arbitration proceeding pursuant to their contract with Del Webb Texas. However, due to a disagreement over the arbitral forum, Swets plaintiffs later refiled in the District of Arizona (the

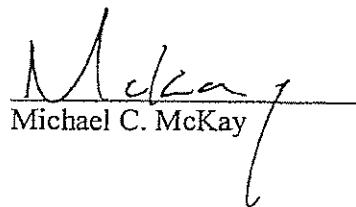
domicile of Del Webb). Swets plaintiffs allege products liability, breach of express warranty, breach of implied warranty, and negligence claims on behalf of “all persons, trusts, corporations, partnerships, associations, and/or entities in the State of Texas that own single family homes constructed by Defendants in which Kitec plumbing fittings are installed.” The case was transferred into this MDL proceeding last November.

- *Mortensen v. Highland Homes.* Tim Mortensen filed this action in the Travis County, Texas Judicial District on May 10, 2010, on behalf of “all persons, trusts, corporations, partnerships, associations, and/or entities in the State of Texas that own single family homes constructed by Defendants in which Kitec is installed.” The complaint includes claims for product liability, breach of express warranty, breach of implied warranty, and negligence. Mortensen is proceeding in Texas State Court.

- *Thompson v. Lennar Corporation, Lennar Homes, LLC, Lennar Homes of Texas, Inc., Lennar Homes of Texas Land and Construction Ltd., Lennar Homes of Texas Sales and Marketing Ltd., and Lennar Houston Land LLC.* The Thompson case was filed in the United States District Court for the Southern District of Florida (where Lennar is headquartered) on May 6, 2010, on behalf of “all persons, trusts, corporations, partnerships, associations, and/or entities in the State of Texas that own single family homes constructed by Defendants in which Kitec is installed.” The case is being arbitrated under the AAA rules in Texas.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: April 14, 2011.



Michael C. McKay

# EXHIBIT “A”

● ORIGINAL ●

1 ORDR

2 J. RANDALL JONES, ESQ. (1927)  
3 WILLIAM L. COULTHARD, ESQ. (3927)  
4 P. KYLE SMITH, ESQ. (9692)  
5 HARRISON, KEMP & JONES, LLP  
6 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
7 Las Vegas, Nevada 89109  
8 Tel. (702) 385-6000

FILED

OCT 16 3 50 PM '06

Lily B. Rujina  
CLERK

9 CHARLES "DEE" HOPPER, ESQ. (6346)  
10 SERGIO SALZANO, ESQ. (6482)  
11 LYNCH, HOPPER & SALZANO, LLP  
12 725 South Sixth Street  
13 Las Vegas, Nevada 89101  
14 Tel. (702) 868-1115  
15 Attorneys for Plaintiffs Quintero et al.

DISTRICT COURT

CLARK COUNTY, NEVADA

A493302

HARRISON, KEMP & JONES, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000  
Fax (702) 385-6001

12 CLASSIC PLUMBING, INC.,

13 Plaintiffs,

14 v.

15 IPEX, INC, IPEX USA, LLC, FERGUSON  
16 ENTERPRISES, INC., STANDARD  
17 WHOLESALE SUPPLY COMPANY,  
18 TODD PIPE & SUPPLY - LAS VEGAS,  
19 INC., DOES I though X; and ROE  
20 CORPORATIONS I though X, inclusive;

21 Defendants.

22 QUINTERRO, et al.

23 Plaintiffs,

24 v.

25 IPEX, INC., et al.

26 Defendants.

27 AND ALL RELATED CLAIMS.

Case No.: A493302  
Dept. No.: XVI

CONSOLIDATED WITH

Case No.: A510543  
Case No.: A517493  
Case No.: A518156

RECEIVED  
OCT 16 2006

COUNTY CLERK

ORDER GRANTING MOTION TO CERTIFY CLASS

THIS MATTER having come on for hearing on the 26<sup>th</sup> day of September, 2006, on  
Plaintiff Quinterro, et al.'s ("Class Plaintiffs") Motion to Certify Class, with Class Plaintiffs  
represented during the hearing by their attorneys, J. Randall Jones, Esq., William L. Coulthard,

1 Esq., and P. Kyle Smith, Esq., of Harrison, Kemp & Jones, LLP., and Francis Lynch, Esq.,  
2 Charles Dee Hopper, Esq., and Sergio Salzano, Esq., of Lynch, Hopper & Salzano, LLP,  
3 Defendants Ipex, Inc. and Ipex USA, LLC represented by James D. Carroway, Esq., Defendants  
4 Classic Plumbing, Inc. and Sharp Plumbing, Inc. represented by David Schopick, Esq., and  
5 Defendant Cox & Sons Plumbing, Inc. represented by Peter Brown, Esq., and no other parties  
6 opposing Class Plaintiffs' Motion to Certify or appearing at the hearing.

7 The Court having reviewed the pleadings and papers herein, heard the arguments of all  
8 counsel, with good cause appearing, and no reason for delay, the Court finds that the  
9 requirements of Nev.R.Civ.P. 23 are met and that certification is appropriate.

10 **IT IS THEREFORE ORDERED** that Class Plaintiffs' Motion to Certify Class be, and  
11 the same hereby is, **GRANTED**;

12 **IT IS FURTHER ORDERED** that the form and content of Class Plaintiffs' proposed  
13 Notice of Class Action is approved and Class Plaintiffs are authorized to send such Notice to  
14 all class members by regular mail;

15 **IT IS FURTHER ORDERED** that Defendants Classic Plumbing, Inc., Sharp  
16 Plumbing, Inc., and Cox & Sons Plumbing, Inc., are hereby required to promptly disclose to  
17 Class Plaintiffs the names and addresses of all subdivisions and homes where brass Kitec  
18 Fittings have been installed;

19 **IT IS FURTHER ORDERED** that the law firms of Harrison, Kemp & Jones, LLP,

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

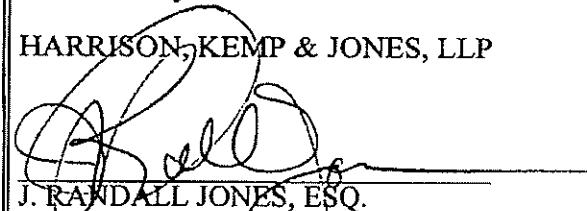
28 ...

1 and Lynch, Hopper & Salzano, LLP are approved as Class Counsel for the class certified by  
2 this Order.

3 DATED this 16<sup>th</sup> day of October, 2006.

4  
5   
6 DISTRICT COURT JUDGE  
7

8 Submitted by:

9   
10 HARRISON, KEMP & JONES, LLP  
11

12 J. RANDALL JONES, ESQ.  
13 Nevada Bar No. 1927  
14 WILLIAM L. COULTHARD, ESQ.  
15 Nevada Bar No. 3927  
16 P. KYLE SMITH, ESQ.  
17 Nevada Bar No. 9692  
18 3800 Howard Hughes Parkway  
19 Seventeenth Floor  
20 Las Vegas, Nevada 89109  
21 Attorneys for Plaintiffs Quintero et al.

22 and,

23 FRANCIS LYNCH, ESQ. (4145)  
24 CHARLES "DEE" HOPPER, ESQ. (6346)  
25 SERGIO SALZANO, ESQ. (6482)  
26 LYNCH, HOPPER & SALZANO, LLP  
27 725 South Sixth Street  
28 Las Vegas, Nevada 89101  
29 Tel. (702) 868-1115  
30 Attorneys for Plaintiffs Quintero et al.

31  
32 P:\USERS\WLCUPEX\Pleadings\Order for Class Certification.wpd

33

34

35

36

37

38

# EXHIBIT “B”

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF CLASS CLARIFICATION  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: January 30, 2009, at 9:00 a.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RESIDENCES IN CLARK COUNTY, NEVADA THAT CONTAIN, OR AT ANY TIME CONTAINED, A KITEC AND/OR PLUMBETTER PIPING SYSTEM AND/OR COMPONENTS (THE "CLASS"). YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON'T ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all members of the Class and published pursuant to Court Order to notify the Class of the following:

- A proposed settlement ("Ipex Settlement") resolving Class claims in this case has been negotiated on behalf of the Class by Class Counsel with Defendants Ipex Inc., and Ipex USA, LLC, (collectively, "Ipex Defendants") and related entities in this case.
- The Ipex Settlement proposes the creation of a ninety million dollar (\$90,000,000.00) Settlement Fund (less attorneys' fees and costs set forth below) to be used for the benefit of Class Members to pay for the repair of homes with Kitec and PlumBetter plumbing systems in addition to attorney's fees and costs under Court supervision.
- This proposed Settlement is only with the Ipex Defendants and related entities (See Question #5). It does not settle or release any claims you may have as a member of the Class against non-released parties (such as builders or plumbers) involved in this litigation. Those claims against builders and plumbers continue to be prosecuted on your behalf.

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Ipex Settlement. The hearing will be held on January 30, 2009, at 9:00 a.m., at the Clark County District Court, Complex Litigation Center, 333 South Sixth Street, Las Vegas, NV, 89101.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>POST MARK</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO JOIN IPLEX SETTLEMENT</b>	If you previously filed a request for exclusion from the class ("Opt-Out"), but wish to take part in this Settlement, then you may withdraw your prior Opt-out by submitting a Request to Join Ipex Settlement. After your Request to Join Ipex Settlement is received, you will be eligible to take part in the Ipex Settlement contemplated by this Notice.	DECEMBER 18, 2008
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court and Class Counsel to object to this Settlement. Class Counsel will provide all objections to all parties and the Court.	DECEMBER 18, 2008
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of the Settlement at the January 30, 2009 Fairness Hearing by submitting a written Notice of Appearance by the December 18, 2008 deadline.	DECEMBER 18, 2008
<b>DO NOTHING</b>	If you do nothing, you will be bound by the Ipex Settlement and be eligible to receive the benefits of the Ipex Settlement if you are a Class Member.	N/A

- These rights and options – and the deadlines for each – are explained in this Notice.
- The Court in charge of this litigation must still decide whether to approve the proposed Settlement.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this notice is sent to you to tell you about legal rights you may have with respect to a settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving a settlement on behalf of the Class under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Class as clarified by the Court on October 30, 2008. If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this settlement. This notice package explains

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumBetter plumbing systems and/or components manufactured or distributed by or on behalf of the Ipex Defendants, and installed within homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec or PlumBetter plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec and PlumBetter plumbing systems or components in Clark County, Nevada are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. **This Class Action does not seek any damages for personal injury.** Any proceeds from this Class Action, after attorneys' fees and costs have been paid, will be used for the benefit of Class Members under Court supervision.

### 3. What will the Ipex Settlement provide homeowners if approved by the Court?

If approved by the Court, the Ipex settlement will create a ninety million dollar (\$90,000,000.00) Settlement Fund (less attorneys' fees and costs set forth below) to be used for the benefit of the Class to pay for the repair and replumb of homes with Kitec and PlumBetter plumbing systems. After the final size of the Class is determined following trial and any appeal, Class Members' pro rata share of the Ipex Settlement will be combined with any money recovered from the other defendants (builders and plumbers) involved in this class action to pay for the replumb of homes. If sufficient money is not recovered from a Class Member's respective builder or plumber, then Class Counsel will petition the Court for further direction regarding how the Ipex Settlement funds should be used for the benefit of the Class. Before the Ipex Settlement can be used for the repair, reimbursement, or replumb of Class Members' homes, however, it must first receive final approval from the Court and survive an appeal, if any, that may be filed by another party (builder or plumber) to this action.

### 4. Why is this a class action?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier.

### 5. Who does the Ipex Settlement include?

The Ipex Settlement includes all persons who own a home in Clark County, Nevada that contains, or at any time contained, a Kitec or PlumBetter plumbing system or component(s) who have not previously opted-out of this class action. The proposed Ipex Settlement seeks to resolve all Class claims against the IPEX Defendants and related entities, which include IPEX Distribution, Inc., IPEX USA Inc. and IPEX USA LLC, IPEX Inc.'s sales agents (including but not limited to T. Christy Enterprises, Inc.), and IPEX Inc.'s wholesalers (including but not limited to Ferguson Enterprises, Inc., Standard Wholesale Supply Company, and Todd Pipe & Supply - Las Vegas, Inc.) (collectively, the "Released Parties"). The proposed Ipex Settlement is only with the Ipex Defendants and Released Parties. It does not settle or release any claims you may have individually or as part of the Class against other non-released parties in this lawsuit.

### 6. Why have the Class and Ipex Defendants decided to settle?

The Court has not decided in favor of the Class or Ipex Defendants. Ipex Defendants vigorously deny any wrongdoing, violation of law, or breach of duty asserted by the Class. Ipex Defendants contend that Class claims have no basis in law or fact; that Ipex Defendants have meritorious affirmative defenses to all claims; and that the class action should be dismissed. Both sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial. The amount paid in this settlement reflects an evaluation of the claims and potential recovery, considering the facts as known to Class Counsel after careful investigation, the likelihood of prevailing at trial, and the likelihood that this litigation, if not settled now, would be further protracted, involve complex issues of fact and law, extra costs and expenses, and the risk the Class could lose at trial.

**7. How do I know if I am part of this Settlement?**

You are part of this Settlement if you: a) own a home in Clark County, Nevada that contains, or at any time contained, a Kitec or PlumBetter plumbing system or component(s); and b) you have not previously opted out of the class action. If you are a tenant of the home that received this Notice, please ensure that this Notice is given to the landlord or owner of the home because it concerns their legal rights and obligations. If you own a home that falls under the definition of the Class, but previously opted out of this class action, you may still take part in this settlement by submitting a Request to Rejoin the Class.

**8. What happens if this Settlement is not approved by the Court?**

If the Ipex Settlement is not approved by the Court at the Fairness Hearing, then the Ipex Settlement will terminate and all Class Members and Parties will be restored to the position they were in before the Ipex Settlement was signed.

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**9. If you previously excluded yourself as a member from the Class Action, can you get back in to accept the Ipex Settlement?**

Yes, but you must first withdraw you prior “opt-out” and submit a Request to Join the Ipex Settlement by December 18, 2008. A Request to Join may be obtained from Class Counsel. If you previously opted out of this class action and do not submit the Request to Join by December 18, 2008, then you will not be eligible to receive any benefit from this settlement.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**10. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Class, then you can tell the Court that you do not like the Ipex Settlement or some part of it. This is called objecting to the settlement. You also have the option and right to hire your own lawyer at your own expense. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, is entitled to approve the Ipex Settlement in spite of objections and all members of Class will be bound by the Ipex Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Ipex Settlement.
- Your address to confirm that you are a member of Class.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before December 18, 2008, to Class Counsel at the following address:**

CLASS Counsel  
Harrison, Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Parkway  
17<sup>th</sup> Floor  
Las Vegas, NV 89169

Counsel for IPEX Defendants  
James D. Carraway  
Carraway & Associates, LLC  
1050 Indigo Drive, Suite 200B  
Las Vegas, NV 89145

**THE LAWYERS WHO REPRESENT THE CLASS AND WHO NEGOTIATED THIS SETTLEMENT**

**11. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* If you have any question regarding the Ipex Settlement, then you should contact Class Counsel to discuss your concerns. The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Harrison, Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South 3rd Street, Suite 130  
Las Vegas, Nevada 89101

**12. How will these attorneys be paid?**

Although Class Counsel's fee agreement with Class Representatives entitle them to request a contingency fee in an amount equal to thirty-three and one-third percent (33 1/3%) of any sum recovered in any settlement reached up to ninety (90) days before trial, Class Counsel has agreed to seek a twenty-five percent (25%) contingency fee from the Ipex Settlement after reduction for any offset for

other related settlements. If Class Counsel were awarded attorney's fees in the amount of 33 1/3%, then its attorney's fees would total at least \$28,194,738.99. By requesting attorney's fees in the amount of 25% of the Ipex Settlement after reduction for any offset for other related settlements, attorneys' fees requested by Class Counsel will not exceed \$21.5 million, plus costs awarded by the Court, which will result in a reduction of attorney's fees requested by Class Counsel of almost \$7,000,000.00. This 25% attorney's fee request must still be approved by the Court as reasonable during the Fairness Hearing on this matter, in addition to any costs awarded by the Court.

### **THE COURT'S FAIRNESS HEARING**

#### **13. When and where will the Court decide whether to approve the Ipex Settlement?**

The Court will hold a Fairness Hearing on January 30, 2009, at 9:00 a.m. At this hearing, the Court will consider whether the Ipex Settlement is fair and adequate. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Ipex Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Clark County District Court  
Complex Litigation Center  
333 South Sixth Street  
Las Vegas, NV, 89101

#### **14. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Ipex Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to Class Counsel on time, the Court will consider it. You may also pay your own lawyer to review the Ipex Settlement or attend the Fairness Hearing on your behalf.

#### **15. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending an Objection (described above within Question #9) to Class Counsel that states you wish to appear at the Fairness Hearing and speak.

### **GETTING MORE INFORMATION**

#### **16. Where can I receive more information about this Settlement?**

This Notice is given to inform you of the Court's preliminary approval of the Ipex Settlement. You may obtain specific details about the Ipex Settlement Agreement itself by contacting Class Counsel at the addresses listed above or by viewing the Ipex settlement on the website ([www.plumbingdefect.com](http://www.plumbingdefect.com)) maintained by Class Counsel to provide information to the Class. You can also review and copy legal documents in this class action, including all Ipex Settlement documents, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302  
 Dept. No.: XVI  
 (ELECTRONIC FILING CASE)

**CONSOLIDATED WITH**  
 Case No.: A510543  
 Case No.: A517493  
 Case No.: A518156  
 Case No.: A523714

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: June 6, 2008, at 9:00 a.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF HOMES LOCATED AT THE ADDRESSES LISTED IN EXHIBIT A TO THIS NOTICE (“SUBCLASS A”) – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON’T ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes located at the addresses listed within Exhibit A to the Court filed Notice (“Subclass A”) and published pursuant to Court Order to notify Subclass A members of the following:

- A proposed Settlement resolving Subclass A claims in this case has been reached between Plaintiff Subclass A Representatives and Defendant Richmond American Homes (“Builder”) in this case.
- This proposed Settlement is only with Builder. It does not settle or release any claims you may have individually or as a member of the Subclass against other Defendants in this litigation.
- The proposed Settlement will provide Subclass A members with a complete re-plumb (or see Section 11 herein) of the Kitec plumbing system that is currently installed at their home with a Court-approved repair.

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass A Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass A Settlement. The hearing will be held on Friday, June 6, 2008, at 9:00 a.m., at the Clark County District Court, Complex Litigation Center, 333 South Sixth Street, Las Vegas, NV, 89101.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>POST MARK</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS (“OPT-OUT”) AND SUBMIT REQUEST TO JOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class (“Opt-Out”), but wish to take part in this Settlement and receive the replumb (or Section 11 alternative) it provides, then you may withdraw your prior Opt-out by submitting a Request to Join Subclass A Settlement. After your Request to Join Subclass A Settlement is received, you will be eligible to receive the replumb contemplated by this Notice.	MAY 23, 2008
<b>OBJECT TO SETTLEMENT</b>	You may write to Class Counsel to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	MAY 23, 2008
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of the Settlement at the Fairness Hearing by submitting a Notice of Appearance.	JUNE 6, 2008, HEARING
<b>DO NOTHING</b>	You will <u>not</u> receive a replumb (or Section 11 alternative) and you give up your right to sue Builder on these claims later.	N/A

- These rights and options – and the deadlines for each – are explained in this Notice.
- The Court in charge of this litigation must still decide whether to approve the proposed Settlement. The replumbs contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals are ruled upon.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order preliminarily approving a settlement on behalf of Subclass A Plaintiffs and Builder under Rule 23 of the Nevada Rules of Civil Procedure, heard on March 26, 2008, by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada. You received this Notice because you own one of the homes within Subclass A, which are listed within Exhibit A to this Notice. If you do not own one of the homes listed within Subclass A then please disregard this Notice. If you are a tenant or occupant of a home listed within Subclass A, please ensure this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this settlement.

This notice package explains

- What this lawsuit is about.
- Your legal rights.
- What the settlement involves.
- What the benefits of this settlement are and who is eligible to receive them.

### 2. What is this lawsuit about?

This is a defective product, negligence, and breach of warranty case arising from allegedly defective brass plumbing fittings ("Kitec Fittings") manufactured or distributed by or on behalf of Defendants IPEX USA, LLC, and IPEX, Inc. (collectively, "Ipex"), and installed by Defendants CLASSIC PLUMBING, INC., SHARP PLUMBING, INC., and COX & SONS PLUMBING, INC. (collectively, "Plumbers") within homes in Clark County, Nevada. On October 16, 2006, the Court certified Plaintiffs' claims as a Class Action. On February 6, 2008, Plaintiffs amended their complaint to add Builder as a defendant. The amended complaint filed against Builder alleges that Subclass A homes suffered injury because of the installation of Kitec Fittings by Builder and seeks damages from Builder.

### 3. Why is this a class action?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams.

### 4. What is a Subclass?

A Subclass is a smaller subset of a larger Class. The settlement described within this Notice only pertains to the Subclass A homes listed in Exhibit A to this Notice.

### 5. Why has the Subclass and Builder decided to settle?

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice;" that Class claims have no basis in law or fact; that Builder has meritorious affirmative defenses to all claims; and that the class action should be dismissed. Both sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial and to quickly provide Subclass members with a replumb (or Section 11 alternative) of their Kitec plumbing system.

### 6. How do I know if I am part of this Settlement?

You are part of this Settlement if: a) you own a home within Subclass A, which are listed in Exhibit A to this Notice; and b) you have not previously opted out of the class action. If you do not own one of the homes listed within Subclass A, you are not a part of this settlement. If you are a tenant of a home listed within Subclass A, please ensure that this Notice is given to the landlord or owner of the home because it concerns their legal rights and obligations. If own a home in Subclass A, but previously opted out of this class action, you may still take part in this settlement by submitting a Request to Rejoin the Class.

### 7. What does the Settlement provide homeowners?

The settlement will provide Subclass A members with a complete re-plumb (or Section 11 alternative) of the Kitec plumbing system currently installed in their home with a Court-approved repair.

### 8. What happens if this Settlement is approved by the Court?

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb (or Section 11 alternative). The notice of the Court's final approval will explain how to obtain the replumb (or Section 11 alternative) provided by the Settlement and will include the Claim Form that you will be required to return to the Claim Administrator to take part in this Settlement.

### 9. What happens if this Settlement is not approved by the Court?

If the Settlement is not approved by the Court at the Fairness Hearing, then the Settlement will terminate and all Subclass Members and Parties will be restored to the position they were in before the Settlement was signed.

**10. How soon will the replumb be scheduled?**

As soon the Court gives final approval to this Settlement, then the Claim Administrator will begin to schedule replumbs for Subclass A homes that have returned the Claim Form. It is anticipated that the replumbs for the Subclass A homes should be completed before October 30, 2009.

**11. What if I already replumbed my home, or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, however, then you may be entitled to reimbursement up to a total amount of \$15,000. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and any supporting documentation that you have to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response to you within 60 days of receipt of the Claim Form. If the Claim Form is approved by the Claim Administrator for reimbursement, you will then be entitled to the amount provided for Replacement Plumbing within the repair schedule for your home. If you have additional out-of-pocket expenses approved by the Claim Administrator above the amount provided within the Court-approved repair schedule for your home, then you may be eligible to receive additional compensation from the Contingency Fund if funds remain after all Subclass repairs are performed and all contingency costs covered. The total reimbursement any homeowner can potentially receive to pay for a prior replumb or damages, however, is limited under this Settlement to \$15,000.00.

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**12. If you previously excluded yourself as a member from the Class Action, can you get back in to accept the Settlement?**

Yes, but you must first withdraw you prior “opt-out” and submit a Request to Join the Subclass A Settlement by May 23, 2008. A Request to Join is included within this Notice and may also be obtained from Class Counsel. If you previously opted out of this class action and do not submit the Request to Join by May 23, 2008, then you will not be eligible to receive the replumb (or Section 11 alternative) provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**13. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form provided in this Notice package. If you exclude yourself, then you will not receive a replumb (or Section 11 alternative), you will not be allowed to object to the Settlement at the Fairness Hearing set on June 6, 2008, at 9:00 a.m., and you will give up your right to sue Builder on these claims later.

**14. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this settlement, then you will not be entitled to pursue an independent claim against Builder concerning Kitec Fittings, although you will still possess your claims against all other defendants in this class action.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**15. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Subclass A, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, is entitled to approve the Settlement in spite of objections and all members of Subclass A will be bound by the Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Richmond Subclass A Settlement.
- Your address to confirm that you are a member of Subclass A.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before May 23, 2008, to Class Counsel at the following address:**

Harrison, Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Parkway  
17<sup>th</sup> Floor  
Las Vegas, NV 89169

## **IF YOU DO NOTHING**

### **16. What happens if I do nothing?**

If you do nothing, you will not receive a replumb and will also give up your right to sue Builder on these claims later. As a member of Subclass A, you will be bound by the decision of the Court even if you do not accept the Settlement. In other words, you will not be able to start a lawsuit later or be part of another lawsuit against Builder regarding the claims in this lawsuit after this Settlement. Therefore, if the Court approves this Settlement and you choose not to accept it, you will have no further rights against Builder, although you will still retain all rights against all other parties to this litigation.

## **THE LAWYERS WHO REPRESENT SUBCLASS A AND WHO NEGOTIATED THIS SETTLEMENT**

### **17. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes Subclass A. Together, these attorneys are called Class Counsel. *You will not be charged for these lawyers under the Settlement.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Harrison, Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
725 South Sixth Street  
Las Vegas, NV 89101

### **18. How will these attorneys be paid?**

Class Counsel negotiated with Builder to be paid \$1.6 million for their attorney's fees and costs as part of this Settlement. This fee will not reduce the amount paid by Builder to fund the replumb of Subclass A homes, but is in addition to the amount Builder has agreed to pay to replumb the Subclass A homes. The Court must approve this fee as reasonable during the Fairness Hearing.

## **The Court's Fairness Hearing**

### **19. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing on June 6, 2008, at 9:00 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Clark County District Court  
Complex Litigation Center  
333 South Sixth Street  
Las Vegas, NV, 89101

### **20. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to Class Counsel on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### **21. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 15) to Class Counsel that states you wish to appear at the Fairness Hearing and speak.

## **Getting More Information**

### **22. Where can I receive more information about this Settlement?**

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action, including all Settlement documents, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS BY MAKING A WRITTEN REQUEST TO HARRISON, KEMP, JONES & COULTHARD, LLP, OR LYNCH, HOPPER & SALZANO, LLP, CLASS COUNSEL, AT THE ADDRESSES PROVIDED IN THIS PRELIMINARY NOTICE. YOU MAY ALSO REVIEW THESE DOCUMENTS AT THE CLARK COUNTY DISTRICT COURT.

**1. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, plumbing contractors approved by the Claims Administrator ("Approved Plumbing Contractors") will perform "Replacement Plumbing," as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT.**

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, WIRSBO, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Subclass Residences are completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and/or its insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder and/or its insurers will pay a total sum of **\$10,243,231.00** to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty-one (31) days of notice of entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure. The Qualified Settlement Fund will be allocated in accordance with the following:

**A. Replumb Fund.** **\$7,328,440.00** of the Qualified Settlement Fund will be designated as the "Replumb Fund" to cover all costs for, arising from or in any way related to the Replacement Plumbing at the Subclass Residences.

**A.1** In the limited circumstance where a Subclass Member, or his agent or representative, has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to the Replacement Plumbing cost provided within the repair schedule for Subclass A homes. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB OF THEIR ORIGINAL KITEC PLUMBING SYSTEM.**

**A.2** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who have monetary damages above the Replacement Plumbing cost provided within the repair schedule for Subclass A homes, up to the total amount of \$15,000 (Replacement Plumbing cost provided within the repair schedule for Subclass A homes plus additional reimbursement amount). In order to qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form, and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**B. Contingency Fund.** **\$1,099,266.00** of the Qualified Settlement Fund, which is equal to fifteen (15) percent of the Replumb Fund, will be designated as the "Contingency Fund," and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of reimbursements as described within Section 3(A)(A.1).

**C. Claims Administration Fund.** **\$215,525** of the Qualified Settlement Fund will be designated as the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; and quality control.

**D. Class Counsel's Fees and Costs.** **\$1,600,000.00** of the Qualified Settlement Fund will be paid to Class Counsel for Class Counsel's fees and costs, which will be paid in two installments: \$1,300,000.00 will be paid to Class Counsel following final approval of this Settlement, and \$300,000.00 will be paid to Class Counsel following completion of the replumb process for all Subclass A homes.

**4. Accrued Interest and Residual Balance on Qualified Settlement Fund.** Within 30 days of the conclusion of the Replacement Plumbing process, any and all residual balance in the Qualified Settlement Fund, including all interest income generated by the Qualified Settlement Fund, will be paid back to Builder or its designee(s).

**5. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumblings and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claim Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumblings and/or Work. Each Subclass Member will look solely to the persons' contractors' (including the Approved Plumbing Contractors'), suppliers' and/or manufacturers' guarantees and warranties, if any, as the sole and exclusive guarantors and/or warrantors for the Settlement Agreement, the Replacement Plumbing and/or all other Work.

**6. Settled Claims.** Settled Claims mean any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Subclass Representative and any and/or Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Subclass Residences (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in the Court or any other court or forum, regardless of legal theory, against Builder for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the Amended Complaint and/or the Class Action and/or any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences and any claim for relief or compensation by the Representative Plaintiff and/or any members of the Settlement Subclass, including but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim for breach or violation of any federal, state, common or other law; (b) any claim for breach of any duty imposed by law, by contract or otherwise; (c) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (d) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section

40.600, et seq; and (e) any claim for consequential damages relating to or caused by the KITEC PLUMBING SYSTEMS including, but not limited to, claims relating to mold caused by the KITEC PLUMBING SYSTEMS.

**B.** This Settlement does not address or contemplate any claims for personal injury.

**7. Dismissal of the Amended Complaint.** Within five (5) days after notice of entry of an Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and full payment by Builder of the Qualified Settlement Fund, the Amended Complaint against Builder will be dismissed with prejudice.

**8. Assignment of Claims to Builder.** As a result of the Settlement, all rights to the Subclass Members' claims, actions and/or causes of action against any and all parties including, but not limited to, Classic Plumbing, Inc., Majestic Plumbing, Inc., IPEX, Inc., IPEX USA, LLC, Ferguson Enterprises, Inc., Standard Wholesale Supply Company, and Todd Pipe & Supply – Las Vegas, Inc., arising from the Settled Claims and any claims for relief or compensation by the Subclass Representative and/or any Subclass Member, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed assigned, conveyed and transferred, without limitation, to Builder up to the amount paid by Builder in this Settlement. Said assignment includes, without limitation, the total monetary amount of the Qualified Settlement Fund paid by Builder plus the total costs incurred by Builder in making repairs and/or conducting replumbs at all homes that are subject to this Settlement, as well as the Subclass Members' claims and standing as member of the putative class in the Class Action. Under this Assignment, Builder is entitled to first priority to any recovery against any third-party or from any collateral source (including, but not limited to, by way of example, settlement proceeds from Ipex and Classic Plumbing relating for the Settlement Residences) up to the total monetary amount paid by Builder in this Settlement. **If Subclass Members are not fully compensated by this Settlement, they will retain all rights and claims against any other potential party or defendant in this action other than Builder above and beyond the total amount paid by Builder in this Settlement.**

**9. Releases.** As a result of the Settlement, the Subclass Representative and the Subclass Members, by and through the Subclass Representative, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder of the Qualified Settlement Fund – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the Amended Complaint filed on or about February 6, 2008, in the Class Action.

**A.** Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbings.

**B.** Subclass Representative and Subclass Members, by and through their Subclass Representative, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. It is the intention of the Subclass Representative in executing the Settlement Agreement that it will deprive Subclass Representative and the Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: April 3, 2009, at 9:00 a.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF HOMES LOCATED WITHIN ANY OF THE COMMUNITIES IN EXHIBIT A TO THIS NOTICE THAT CONTAIN, OR, AT ANY TIME CONTAINED, A KITEC OR PLUMBETTER ("KITEC") PLUMBING SYSTEM – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON'T ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes located within the communities and addresses listed in Exhibit A to this Notice ("Subclass") and published pursuant to Court Order to notify Subclass members that:

- A proposed settlement ("Settlement") resolving Subclass claims in this case has been reached between Plaintiff Subclass Representatives and Defendants Del Webb Communities, Inc., and Del Webb's Coventry Homes of Nevada, Inc., ("Builders") on behalf of themselves and their plumbing contractor, Cox & Sons Plumbing (collectively, the "Released Parties" – see Paragraph 8 on Page 8).
- This Settlement will create a settlement fund for the benefit of Subclass members to pay for the replumb of homes with Kitec and PlumBetter plumbing systems. Under certain circumstances approved by the Claims Administrator over this Settlement, settlement funds may also be used to reimburse homeowners for reasonable costs, or a portion of reasonable costs, already expended by homeowners in the replumb or repair of their Kitec or PlumBetter plumbing system.

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on April 3, 2009 at 9:00 a.m., at the Clark County District Court, Complex Litigation Center, 333 South Sixth Street, Las Vegas, NV, 89101.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DUUE DATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out"), but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin Subclass Settlement. After your Request to Join Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Del Webb Settlement.	MARCH 16, 2009
<b>ACCEPT SETTLEMENT</b>	If you wish to participate in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	MARCH 16, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the deadline.	MARCH 16, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and be eligible to receive the benefits of the Settlement if you are a member of the Subclass.	N/A

- Your rights and options under this Settlement – and the deadlines for each – are explained in this Notice.
- The Court in charge of this litigation must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this settlement on behalf of the Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Subclass. If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this settlement. This notice package explains

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumBetter ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed within homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec or PlumBetter plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec and PlumBetter plumbing systems or components in Clark County, Nevada are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury. Any proceeds from this Class Action, after attorneys' fees and costs have been paid, will be used for the benefit of Class Members under Court supervision.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a \$23,653,600.00 Settlement Fund (less attorneys' fees and costs set forth below) to be used for the benefit of the Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to approximately 6,617 homes constructed by Builders, which include: 1) approximately 640 homes in Sun City Summerlin that have hot water Kitec plumbing only, which was installed because of problems associated with thermal-galvanic corrosion ("Thermal Galvanic Homes") of the existing plumbing; 2) approximately 2,263 homes in Sun City Anthem constructed with Kitec plumbing that accepted \$7,800.00 from Builders and executed a full release and assignment of all claims with Builders ("Released Homes"); and 3) approximately 3,714 Del Webb and Coventry homes who have received no payment from Builders ("Kitec Homes"). This Settlement is based upon an average settlement amount of \$4,800 for Thermal Galvanic Homes and \$6,500 for the 3,714 Kitec Homes, which will ultimately be combined with the Subclass's pro rata share of settlement funds, if any, recovered from other defendants (such as the pending \$90 million dollar settlement with manufacturer of Kitec plumbing discussed in paragraph 4, below) involved in this class action on behalf of the Subclass. The combined settlement funds will then be used on behalf of the Subclass to fund the replumb of the Kitec plumbing system with a Court-approved repair. Under certain circumstances approved by the Claims Administrator over this Settlement, Settlement funds may also be used to reimburse homeowners for reasonable costs, or a portion of reasonable costs, already expended by homeowners in the replumb or repair of their Kitec plumbing system:

- a) **Kitec Homes & Thermal Galvanic Homes** – For homeowners who have not already replumbed their home and have not previously received money from Builders, this Settlement will seek to fund the replumb of the Kitec plumbing system currently installed at their home with the Court-approved repair approved by this Settlement.
- b) **Kitec Homes & Thermal Galvanic Homes** – For homeowners who have previously paid for a replumb out of pocket, but have not previously received money from Builders, this Settlement will initially provide a pro rata distribution of the Settlement to reimburse the homeowner for out-of-pocket expenses. If homeowners' existing out-of-pocket expenses exceed the amount of the initial pro-rata distribution, homeowners may request additional reimbursement for reasonable expenses from the Claims Administrator. If the request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.
- c) **Released Homes** – For homeowners who have previously accepted money from Builders to replumb their homes and executed a release of claims with Builders, this Settlement will not provide an initial pro-rata distribution. If homeowners' have existing out-of-pocket expenses related to a Kitec plumbing system that exceed the amount of the money they have already received from Builders, then the homeowners may request reimbursement for reasonable expenses from the Claims Administrator. If the request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

### 4. Are additional funds anticipated from other parties?

Class Counsel have also reached a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities that is currently pending final approval by the Court (the "Ipex Settlement"). After the final size of the Class is determined following trial and any appeal, the pro rata share of the Ipex Settlement will be combined with this Settlement, if it receives final approval, to create a combined settlement fund to carry out replumbs and reimbursements on behalf of the Subclass. Class Counsel estimate that the combined pro rata share for Subclass homes will be approximately \$9,100.00, which, after all

attorney's fees and costs are paid, Class Counsel believe will result in a sufficient amount to fund the Court-approved repair and reimbursement protocol contemplated by this Settlement. If sufficient money is not recovered from other defendants on behalf of the Subclass, Class Counsel will petition the Court for further direction regarding how Settlement funds should be distributed for the benefit of the Class. Before this Settlement can be used for the replumb or reimbursement of Subclass homes, however, it must first receive final approval from the Court and survive any appeals that may be filed by other parties to this action.

**5. Why is this a class action and what is a Subclass?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Settlement described in this Notice pertains only to the Subclass homes listed in Exhibit A to this Notice.

**6. Why have the Subclass and Builders decided to settle?**

The Court has not decided in favor of the Subclass or Builders. Builders vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builders contend that their homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice;" that Class claims have no basis in law or fact; that Builders has meritorious affirmative defenses to all claims; and that the class action should be dismissed. Both sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**7. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) you own a home within the Subclass, which includes the addresses and communities listed in Exhibit A to this Notice; and b) you have not previously opted out of the class action. If you do not own one of the homes listed within Subclass, you are not a part of this settlement. If you are a tenant of a home listed within Subclass, please ensure that this Notice is given to the landlord or owner of the home because it concerns their legal rights and obligations. If you own a home in Subclass, but previously opted out of this class action, you may still take part in this settlement by submitting a Request to Rejoin the Class.

**8. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claim Administrator to take part in this Settlement.

**9. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, then the Settlement will terminate and all Subclass Members and parties will be restored to the position they were in before the Settlement was signed.

**10. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, the Claims Administrator will begin to schedule replumbs for Subclass homes that have returned their Claim Form.

**11. What if I already replumbed my home, or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already paid out-of-pocket for the replumb of your home, then you may be entitled to reimbursement. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form (which you will receive upon final approval of this Settlement) and any supporting documentation that you have to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response to you within 60 days of receipt of the Claim Form. If the Claim Form is approved by the Claim Administrator for reimbursement, you will then be entitled to a pro-rata share of the Settlement Fund for your home. If your existing out-of-pocket expenses exceed the amount of the initial pro-rata distribution, you may request additional reimbursement for reasonable expenses from the Claims Administrator. If the request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**12. What if I previously accepted money from Builders and executed a release of claims?**

If you previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then you are not entitled to an initial pro-rata distribution from this Settlement, but may be eligible for reimbursement if you have additional out-of-pocket expenses because of your replumb or damages from a Kitec fitting leak that exceed the amount you previously accepted from Builders. To request reimbursement for reasonable costs above the amount you previously accepted from Builders, you must submit a

Claim Form and any supporting documentation that you have to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response to you within 60 days of receipt of the Claim Form. If your request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

### **YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

#### **13. If you previously excluded yourself as a member from the Class Action, can you get back in to accept the Settlement replumb?**

Yes, but you must first withdraw your prior “opt-out” and submit a Request to Rejoin the Subclass Settlement by March 16, 2009. A Request to Rejoin is included within this Notice and may also be obtained from Class Counsel. If you previously opted out of this class action and do not submit the Request to Rejoin by March 16, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

### **YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

#### **14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builders on these claims later.

#### **15. If I exclude myself, may I pursue a claim against Builders independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builders concerning Kitec Fittings, although you will still possess your claims against other potential defendants in this class action.

### **YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

#### **16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, is entitled to approve the Settlement in spite of objections and all members of Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- DEL WEBB SETTLEMENT
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Del Webb Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before March 16, 2009, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

### **IF YOU DO NOTHING**

#### **17. What happens if I do nothing?**

If you do nothing, you will not receive a replumb or benefit of this Settlement and you will also give up your right to sue Builders on these claims later. As a member of Subclass, you will be bound by the decision of the Court even if you do not accept the Settlement. In other words, you will not be able to start a lawsuit later or be part of another lawsuit against Builders regarding the claims in this lawsuit after this Settlement. Therefore, if the Court approves this Settlement and you choose not to accept it, you will have no further rights against Builders, although you will still retain all rights against all other parties to this litigation.

## THE LAWYERS WHO REPRESENT SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
725 South Sixth Street  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Although Class Counsel's fee agreement with Class Representatives entitle them to request a contingency fee in an amount equal to forty percent (40%) of any sum recovered in any settlement reached less than ninety (90) days before trial, Class Counsel has agreed to seek a twenty-five percent (25%) contingency fee from the money paid by Builders to fund this Settlement. Additionally, Class Counsel request the Court to award a portion of Builders' share of the pending Ipex Settlement to Class Counsel as attorney's fees for homes that previously received funds from Builders because of Class Counsel's efforts. If Class Counsel were awarded attorney's fees in the amount of 40% of this Settlement, plus a portion of Builders' share of the pending Ipex Settlement, then Class Counsel's attorney's fees would total at least \$11,000,000.00. By requesting attorney's fees in the amount of 25% of the Ipex Settlement plus a portion of Builders' share of the pending Ipex Settlement, attorneys' fees requested by Class Counsel will be approximately \$9,000,000.00, plus costs awarded by the Court, which will result in a reduction of attorney's fees requested by Class Counsel of almost \$2,000,000.00. Class Counsel's attorney's fee request must still be approved by the Court as reasonable during the Fairness Hearing on this matter, in addition to any costs awarded by the Court.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on April 3, 2009, at 9:00 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Clark County District Court  
Complex Litigation Center  
333 South Sixth Street  
Las Vegas, NV, 89101

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action, including all Settlement documents, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

Your Review of the Settlement Agreement. The Settlement Agreement is described in general terms below. **YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS BY MAKING A WRITTEN**

**REQUEST TO KEMP, JONES & COULTHARD, LLP, OR LYNCH, HOPPER & SALZANO, LLP, CLASS COUNSEL, AT THE ADDRESSES PROVIDED IN THIS PRELIMINARY NOTICE. YOU MAY ALSO REVIEW THESE DOCUMENTS AT THE CLARK COUNTY DISTRICT COURT.**

**1. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, plumbing contractors approved by the Claims Administrator ("Approved Plumbing Contractors") will perform "Replacement Plumbing," as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT.**

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, WIRSBO with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will NOT be entitled to any other or any further relief of any time or nature from Builders or from the Claims Administrator. However, it is the intent of the Parties that Builders (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Subclass Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builders and/or its insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builders and/or its insurers will pay a total sum of **\$23,653,600.00** to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty-one (31) days of notice of entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure. After the final size of the Class is determined following trial and any appeals, this Fund will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2, above.

**A.1 Reimbursements.** In the limited circumstance where a Subclass Member, or his agent or representative, has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB OF THEIR ORIGINAL KITEC PLUMBING SYSTEM.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who have monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form, and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but **may** be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb.

or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**A.3. Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction , repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon funding of the Qualified Settlement Fund, a portion of the Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released to the Claim Administrator for payment to Class Counsel. Further, upon release of the Iplex Settlement Funds and after the final size of the Class is determined following trial and any appeals, any additional attorney's fee awarded by the Court based upon Builder's pro rata share of the Iplex Settlement shall be placed within the "Class Counsel's Fees and Costs" portion of the Qualified Settlement Fund and immediately released to the Claim Administrator for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumblings and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builders, Class Counsel, nor the Claim Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumblings and/or Work. Each Subclass Member will look solely to the persons' contractors' (including the Approved Plumbing Contractors'), suppliers' and/or manufacturers' guarantees and warranties, if any, as the sole and exclusive guarantors and/or warrantors for the Settlement Agreement, the Replacement Plumbing and/or all other Work.

**5. Settled Claims.** Settled Claims mean any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Subclass Representative and any and/or Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Subclass Residences (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in the Court or any other court or forum, regardless of legal theory, against Builders for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the Amended Complaint and/or the Class Action and/or any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences and any claim for relief or compensation by the Representative Plaintiff and/or any members of the Settlement Subclass, including but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing.

A. Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim for breach or violation of any federal, state, common or other law; (b) any claim for breach of any duty imposed by law, by contract or otherwise; (c) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (d) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (e) any claim for consequential damages relating to or caused by the KITEC PLUMBING SYSTEMS including, but not limited to, claims relating to mold caused by the KITEC PLUMBING SYSTEMS.

B. This Settlement does not address or contemplate any claims for personal injury.

6. **Dismissal of the Amended Complaint.** Within five (5) days after notice of entry of an Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and full payment by Builders of the Qualified Settlement Fund, the Amended Complaint against Released Parties will be dismissed with prejudice.

7. **Releases.** As a result of the Settlement, the Subclass Representative and the Subclass Members, by and through the Subclass Representative, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builders of the Qualified Settlement Fund – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builders (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against the Builders (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the Amended Complaint filed on or about February 6, 2008, in the Class Action. Under this Settlement, the Subclass additionally release Builders' plumbing contractor, Cox & Sons Plumbing, from claims made against them in this matter. Nothing contained within this Settlement, however, shall be construed to interfere with, or prohibit, any existing claims against Cox & Sons Plumbing, Inc., asserted by Builders.

A. Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumblings.

B. Subclass Representative and Subclass Members, by and through their Subclass Representative, recognize that they may have some claim, demand, or cause of action against the Builders (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. It is the intention of the Subclass Representative in executing the Settlement Agreement that it will deprive Subclass Representative and the Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builders (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Subclass Members and Subclass Representative therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representative and Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Subclass Members.

D. The Released Parties (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will not be subject to liability or expense of any kind to Subclass Representative or any Subclass Members arising from or in any way related to any Settled Claim, except as provided herein this Section E. Upon entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, Subclass Representative and each and all of the Subclass Members will be barred from initiating, asserting, or prosecuting any Settled Claims against the Released Parties (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

#### EXHIBIT A

DEFENDANTS/BUILDERS	COMMUNITIES
Del Webb Communities, Inc. ("Del Webb")	Sun City Anthem*
	Sun City Anthem – Released Homes
	Sun City MacDonald Ranch*
	Sun City Summerlin*
	Sun City Summerlin – Thermal Galvanic Homes
Del Webb's Coventry Homes of Nevada, Inc. ("Coventry")	Cobblestone Ridge*
	Copper Crest*
	Coventry Homes at Anthem
	San Rafael
	Tierra De Las Palmas

\* Only some of the Del Webb and Coventry homes within these communities were plumbed with a Kitec plumbing system, which is the subject of this class action.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

10001  
Homeowner or Current Resident  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
**(ELECTRONIC FILING CASE)**

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

**Hearing Date & Time: June 22, 2009, at 9:00 a.m.**

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO: ALL OWNERS OF RECORD OF HOMES WITHIN RICHMOND SUBCLASS B – YOUR LEGAL RIGHTS ARE  
AFFECTED WHETHER YOU ACT OR DON'T ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.**

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes within Richmond Subclass B, which are located within the communities listed at the end of this Notice and published pursuant to Court Order to notify Subclass B members that:

- This Settlement will create a settlement fund for the benefit of Subclass B members to pay for the replumb of homes with Kitec and PlumBetter plumbing systems. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass B Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass B Settlement. The hearing will be held on June 22, 2009 at 9:00 a.m., at the Clark County District Court, Complex Litigation Center, 333 South Sixth Street, Las Vegas, NV, 89101.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out"), but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin Subclass B Settlement. After your Request to Join Subclass B Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JUNE 8, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JUNE 8, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the deadline.	JUNE 8, 2009
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by this Settlement</b> and will be eligible to receive the benefits of the Settlement if you are a member of Subclass B.	N/A

- Your rights and options under this Settlement – **and the deadlines for each** – are explained in this Notice.
- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this settlement on behalf of Subclass B under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of Subclass B. If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this settlement. This notice package explains

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumBetter ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec or PlumBetter plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec and PlumBetter plumbing systems or components in Clark County, Nevada are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This **Class Action does not seek any damages for personal injury.**

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund to be used for the benefit of Subclass B to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 2,472 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing, Ipex, as discussed in paragraph 5 below. These combined settlement funds will then be used on behalf of Subclass B to fund the replumb of the Kitec plumbing system with a Court-approved repair.

**4. What is the Richmond/Classic Subclass?**

Builder previously reached a settlement with 1,251 similarly situated homeowners in this Class Action. The 1,251 home settlement resulted in Richmond Settlement Subclass A. All of the 1,251 homes in Subclass A were plumbed by Builder's plumbing contractor, Classic Plumbing, Inc. After the Subclass A settlement was completed, the parties discovered additional homes that were plumbed by Classic Plumbing; these additional homes are included within Subclass B. Builder and Classic Plumbing agreed to settle the Builder's claims for indemnity for all of the Richmond/Classic Subclass homes (see, Exhibit B to this Notice). In view of Classic Plumbing's settlement contribution, Class Counsel (on behalf of Richmond Settlement Subclass A *and* this Settlement Subclass B) has agreed to release the class claims against Classic Plumbing for those homes listed within Exhibit B.

**5. Are additional funds anticipated from other parties?**

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement has been approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement is therefore currently segregated in various protected accounts pending the resolution of the appeal. This (Richmond Subclass B ) Settlement is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of Subclass B. In the event the appeal against the Ipex Settlement appeal is successful, Class Counsel, on behalf of Subclass B, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action.

**6. How will this Settlement be funded?**

The specific funding for this Settlement is as follows:

\$3,511,483 from the Builder

\$2,752,000 from Classic Plumbing to the Builder

\$4,561,397 from the Ipex Settlement (for the Builder's share of the Ipex Settlement funds as it relates to *Richmond Settlement Subclass A*)

\$5,688,072 from the Ipex Settlement (for the Builder's share of the Ipex Settlement funds as it relates to the Subclass B homes)

**7. Why is this a class action and what is a Subclass?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Settlement described in this Notice pertains only to the Subclass B homes.

**8. Why have the Subclass and Builder decided to settle?**

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice;" that Class claims have no basis in law or fact; that Builder has meritorious affirmative defenses to all claims; and that the class action should be dismissed. Both sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**9. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) you own a home within Subclass B; and b) you did not previously opt out of this class action. If you do not own a home within Subclass B, you are not a part of this settlement. If you are a tenant of a home within Subclass B, please ensure that this Notice is given to the landlord or owner of the home because it concerns their legal rights and obligations. If you own a home in Subclass B, but previously opted out of this class action, you may still take part in this Settlement by submitting a Request to Rejoin the Class. The Subclass B residences are found within the communities listed at the end of this Notice.

**10. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claim Administrator to take part in this Settlement.

**11. What happens if this Settlement is not approved by the Court?**

If this Settlement is not approved by the Court at the Fairness Hearing, then the Settlement will terminate and all Subclass B Members and parties will be restored to the position they were in before the Settlement was signed.

**12. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, the Claims Administrator will begin to schedule replumbs for those Subclass B Members that have returned their Claim Form, with priority given to homes that are at greater risk for Kitec failures.

**13. What if I already replumbed my home, or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, then you may be entitled to reimbursement up to a maximum amount of \$15,000, subject to approval by the Claim Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claim Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. NOTE: DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**14. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first withdraw your prior “opt-out” and submit a Request to Rejoin the Subclass Settlement by June 8, 2009. A Request to Rejoin may be obtained from Class Counsel. If you previously opted out of this class action and do not submit the Request to Rejoin by June 8, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**15. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**16. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**17. How do I tell the Court if I do not like the Settlement?**

If you are a member of Subclass B, you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, is entitled to approve the Settlement in spite of objections and all members of Subclass B will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- RICHMOND SUBCLASS B SETTLEMENT
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Richmond Settlement Subclass B.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before June 8, 2009, with copies sent to the following address:  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

## IF YOU DO NOTHING

### 18. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of Subclass B. If this Settlement receives final approval from the Court, you will receive a Claim Form with further instructions to request the benefits of this Settlement. If you do not return your Claim Firm, you will not receive a replumb or benefit of this Settlement and you will also give up your right to sue Builder and/or its plumbing subcontractors on these claims later. As a member of Subclass B, you will be bound by the decision of the Court even if you do not accept the Settlement. In other words, you will not be able to start a lawsuit later or be part of another lawsuit against Builder regarding the claims in this lawsuit after this Settlement. Therefore, if the Court approves this Settlement and you choose not to accept it, you will have no further rights against Builder nor any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 19. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes Subclass B. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South 3<sup>rd</sup> Street, Suite #130  
Las Vegas, NV 89101

### 20. How will these attorneys be paid?

Class Counsel negotiated with Builder to be paid \$1,472,072 for their attorney's fees and costs as part of this Settlement. This fee will not reduce the amount ultimately paid to fund the replumb of Subclass B homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement. The Court must approve this fee as reasonable during the Fairness Hearing.

## The Court's Fairness Hearing

### 21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on June 22, 2009, at 9:00 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Clark County District Court  
Complex Litigation Center  
333 South Sixth Street  
Las Vegas, NV, 89101

### 22. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### 23. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 17) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 24. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action, including all Settlement documents, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS BY MAKING A WRITTEN REQUEST TO KEMP, JONES & COULTHARD, LLP, OR LYNCH, HOPPER & SALZANO, LLP, CLASS COUNSEL, AT THE ADDRESSES PROVIDED IN THIS PRELIMINARY NOTICE. YOU MAY ALSO REVIEW THESE DOCUMENTS AT THE CLARK COUNTY DISTRICT COURT.

**I. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform "Replacement Plumbing," as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT.**

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Subclass B Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builders and/or its insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, the total sum of \$16,512,952 shall be paid to the Qualified Settlement Fund for the benefit of Settlement Subclass B following notice of entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure. The Qualified Settlement Fund will be allocated in accordance with the following:

**A. Replumb Fund.** \$13,224,800 of the Qualified Settlement Fund will be designated as the "Replumb Fund" to cover the costs for the Replacement Plumbing at the Subclass B Residences.

**A.1** In the limited circumstance where a Subclass B Member, or his agent or representative, has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) a full replumb at no cost; or b) reimbursement of the amount equal to the Replacement Plumbing cost provided within the repair schedule for Subclass B homes. If funds remain after all Subclass repairs are performed and all contingency costs covered, then the Claims Administrator may, at its discretion, further reimburse Subclass B Members who have monetary damages above the Replacement Plumbing cost provided within the repair schedule for Subclass B homes,

up to the total amount of \$15,000 (Replacement Plumbing cost provided within the repair schedule for Subclass B homes plus additional reimbursement amount). In order to qualify for a reimbursement, the Subclass B Member must submit a Claim Form to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form, and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 IN NO EVENT WILL A SUBCLASS B MEMBER BE ENTITLED TO RECEIVE THE COMPENSATION DESCRIBED IN SECTION A.1 ABOVE AND REPLACEMENT PLUMBING.** In the event a Subclass B Member qualifies for the compensation described in Section A.1 above, it is solely up to the Subclass B Member's discretion to determine whether the Subclass B Member wants the compensation described in Section A.1 above in lieu of the Replacement Plumbing.

**B. Contingency Fund.** \$1,322,480 of the Qualified Settlement Fund, which is equal to ten (10) percent of the Replumb Fund, will be designated as the "Contingency Fund," and will serve to cover: (a) the Parties' best estimate of the unforeseen and reasonable costs related to the Replacement Plumbing, which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction , repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of reimbursements as described within Section 3(A)(A.1).

**C. Claims Administration Fund.** \$493,600 of the Qualified Settlement Fund will be designated as the "Claims Administration Fund" to pay for the cost of services provided by the Claim Administrator under the Settlement Agreement. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; and quality control.

**D. Class Counsel's Fees and Costs.** \$1,472,072 of the Qualified Settlement Fund will be paid to Class Counsel for Class Counsel's fees and costs, which will be paid in two installments: \$1,000,000 will be paid to Class Counsel following final approval of this Settlement, and \$472,072 will be paid to Class Counsel following completion of the replumb process for the Subclass B homes.

**4. Accrued Interest and Residual Balance on Qualified Settlement Fund.** Within 30 days of the conclusion of the Replacement Plumbing process, any and all residual balance in the Qualified Settlement Fund, including all interest income generated by the Qualified Settlement Fund, will be paid back to Builder or its designee(s).

**5. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claim Administrator. Neither Builder, Class Counsel, nor the Claim Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumblings and/or Work. Each Subclass B Member will look solely to the persons' contractors' (including the Approved Plumbing Contractors'), suppliers' and/or manufacturers' guarantees and warranties, if any, as the sole and exclusive guarantors and/or warrantors for the Settlement Agreement, the Replacement Plumbing and/or all other Work.

**6. Settled Claims.** Settled Claims are those claims that you are releasing the Builder and its plumbing subcontractors. Settled Claims mean any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Subclass B Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Subclass B Residences (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or its Plumbing Subcontractors including, but not limited to, Classic Plumbing, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically excludes any claim for personal injury.

A. Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

B. This Settlement does not address or contemplate any claims for personal injury.

7. **Dismissal of the Amended Complaint.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Subclass B Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and full payment by Builder of its share of the Settlement Funds to the Qualified Settlement Fund, the Amended Complaint against Builder and Classic Plumbing will be dismissed with prejudice.

8. **Releases.** As a result of the Settlement, the Subclass Representative and the Subclass B Members, by and through the Subclass Representative, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Classic Plumbing of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Classic Plumbing and Builder (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Classic Plumbing and Builder (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

A. Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

B. Subclass Representative and Subclass B Members, by and through their Subclass Representative, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Subclass B Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement B Subclass to be true, and the Subclass B Members and Subclass Representative therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representative and Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Subclass B Members.

9. **Assignment of Claims to Builder.** As a result of the Settlement, all rights to the Subclass B Members' claims, actions and/or causes of action against any plumber responsible for plumbing any Settlement Subclass B Residence with Kitec Plumbing Systems including, but not limited to, Cox & Sons Plumbing, D.R. Bowles Plumbing, Lakewood Plumbing, Majestic

Plumbing and Sharp Plumbing, arising from or in any way related to the Settled Claims and any claims for relief or compensation by the Subclass Representative and/or any Subclass B Member, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass B Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass B Residences, will be deemed assigned, conveyed and transferred, without limitation, to Builder up to the amount paid by or on behalf of the Builder (\$10,879,905.97) in this Settlement.

10. **Potential Risk to Subclass B Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, Subclass B Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of Subclass B, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to \$10,249,469 for the benefit of Subclass B.

11. **Richmond Communities where Subclass B Homes are Located.**

RICHMOND AMERICAN SUB-CLASS B COMMUNITIES*		
Anthem Parcel I	Cobblestone Village	Mystic Valley
Anthem Parcel II	Encore 19	Palmas Verde
Aspen Hills II	Galena Pointe	Richmond Heights
Aurora	Glenmoor	Sandstone
Aurora II	Glenmoor II	Sandstone II
Avellino Estates	Iron Horse Estates	Sandstone III
Aviara	Madera 45 & 50	Sandy Ridge
Belcrest	Meridian Hills	Solaro
Bella Vista	Monarch Estates	Somerset
Black Mountain Vistas	Monterey	The Trails at Spring Mtn Ranch
Bonita Hills	Mystic Bay	
Brookhaven	Mystic Canyon	

\*Not every home located within these communities is included in the Richmond Subclass B settlement.

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Subclass Members and Subclass Representative therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representative and Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Subclass Members.

E. Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will not be subject to liability or expense of any kind to Subclass Representative or any Subclass Members arising from or in any way related to any Settled Claim, except as provided herein this Section E. Upon entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, Subclass Representative and each and all of the Subclass Members will be barred from initiating, asserting, or prosecuting any Settled Claims against Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys)

**TO RECEIVE THE REPLACEMENT PLUMBING OR COMPENSATION PROVIDED BY THIS SETTLEMENT, YOU MUST COMPLETE AND SUBMIT A CLAIM FORM, WHICH WILL BE MAILED TO YOU FOLLOWING THE FAIRNESS HEARING AND FINAL APPROVAL OF THE COURT OF THIS SETTLEMENT.**

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: August 3, 2009, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF DEVELOPERS OF NEVADA HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by The Developers of Nevada (“Builder”) that contain Kitec or PlumbBetter plumbing systems (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder and Classic Plumbing, Inc. (“Plumber”), the Plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on August 3, 2009, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DUEDATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 15, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 15, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 15, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a Settlement Fund in the amount of \$1,212,359.86 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 283 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members against Builder and Plumber. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass. Additionally, the Class continues to pursue claims against another Developers of Nevada plumbing subcontractor, Majestic Plumbing, who performed work on approximately 40 Developers of Nevada Subclass homes.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$732,359.86 from Builder and/or its insurance carriers; and \$480,000 from Plumber and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representatives are Rod and Rhonda Saup. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

### 7. Why have the Subclass, Builder, and Plumber decided to settle?

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system (such homes are typically located within the Builder's neighborhoods known as Dove Canyon and Lynbrook-Carmel Hills, however the location of your home within these neighborhoods does not automatically mean that it contains a Kitec plumbing system. A list of all addresses whose owners are members of this Settlement Subclass has been filed with the District Court); and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB.** PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before July 15, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Developers of Nevada Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before July 15, 2009, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Subclass Settlement Objections*

## **IF YOU DO NOTHING**

### **17. What happens if I do nothing?**

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or Plumber.

## **THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT**

### **18. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard Kemp, Jones & Coulthard, LLP Wells Fargo Tower, 17 <sup>th</sup> Floor 3800 Howard Hughes Parkway Las Vegas, NV 89169	Francis Lynch, Charles Hopper, & Sergio Salzano Lynch, Hopper & Salzano, LLP 231 South Third Street, #130 Las Vegas, NV 89101
---	--

### **19. How will these attorneys be paid?**

Class Counsel negotiated with Builder and Plumber to be paid 25% of the Settlement Fund as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## **The Court's Fairness Hearing**

### **20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on August 3, 2009, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### **21. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### **22. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. **YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR OTHER DOCUMENTS MEMORIALIZING THE AGREEMENT BY MAKING A WRITTEN REQUEST TO CLASS COUNSEL AT THE ADDRESSES PROVIDED IN QUESTION 18 ABOVE.**

**I. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform Replacement Plumbing, as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section 3.A.1 and 3.A.2 below.

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builders, Plumber, and/or their insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder, Plumber and/or their insurers will pay a total sum of \$1,212,359.86 to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty days of notice of entry of the Court's Order granting preliminary approval of this Settlement.

Class Counsel's court-approved fees and costs will be paid from the Settlement Fund. The remaining funds will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2 above.

**A.1 Reimbursements.** In the limited circumstance where a Subclass Member or his agent or representative has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who has incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**A.3. Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon the funding of the Qualified Settlement Fund, a portion of the total Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbings and/or Work. Each of the Settlement Subclass Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**5. Settled Claims.** Settled Claims are those claims from which you are releasing the Builder and Plumber, and include any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Settlement Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Settlement Subclass homes (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumber, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically exclude any claim for personal injury and any claims against Majestic Plumbing in this action, which Builder has assigned to the Class.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential property damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate, and expressly excludes, any claims for personal injury.

**6. Dismissal of Subclass Claims.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Settlement Funds to the Qualified Settlement Fund, all of the Subclass Members' claims against Builder and Plumber will be dismissed with prejudice.

**7. Releases.** As a result of the Settlement, the Subclass Representatives and the Settlement Subclass Members, by and through the Subclass Representatives, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Plumber of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumber (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

**A.** Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

**B.** Subclass Representatives and the Settlement Subclass Members, by and through their Subclass Representatives, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Settlement Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

**C.** The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Settlement Subclass Members and Subclass Representatives therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representatives and the Settlement Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Settlement Subclass Members.

**8. Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipxex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipxex Settlement – and the related funding of the Ipxex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipxex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

**Hearing Date & Time: August 3, 2009, at 1:30 p.m.**

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO: ALL OWNERS OF RECORD OF AMERICAN PREMIERE HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.**

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by American Premiere Homes and Development and American Premiere, Inc. (“Builder”) that contain Kitec or PlumbBetter plumbing systems and are located in the subdivisions known as Cobblestone Court (aka Elkhorn Cimarron), Lynnbrook (aka Brookshire), and Sunset Hills (“the Settlement Subclass”). The purpose of this notice is to notify the Settlement Subclass members that a Settlement has been reached with Builder and Classic Plumbing, Inc. (“Plumber”), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on August 3, 2009, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 15, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 15, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 15, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund in the amount of \$800,000 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 152 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). The Plumbers responsible for installing the Kitec plumbing systems in the Settlement Subclass have also contributed funds to this Settlement. Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the 152 homes with Kitec plumbing systems with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$496,000 from Builder and/or its insurance carriers; and \$304,000 from Plumber and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlag, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbrian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representatives are Pamela Smith, Kari Brady, and Paul Brady. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

### 7. Why have the Subclass, Builder, and Plumber decided to settle?

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located in one of the following developments: Cobblestone Court (aka Elkhorn Cimarron), Lynnbrook (aka Brookshire), or Sunset Hills; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before July 15, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The American Premiere Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before July 15, 2009, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attn: Subclass Settlement Objections*

## **IF YOU DO NOTHING**

### **17. What happens if I do nothing?**

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## **THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT**

### **18. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. You will not be individually charged for these lawyers. The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard	Francis Lynch, Charles Hopper, & Sergio Salzano
Kemp, Jones & Coulthard, LLP	Lynch, Hopper & Salzano, LLP
Wells Fargo Tower, 17 <sup>th</sup> Floor	231 South Third Street, #130
3800 Howard Hughes Parkway	Las Vegas, NV 89101
Las Vegas, NV 89169	

### **19. How will these attorneys be paid?**

Class Counsel negotiated with Builder and Plumber to be paid 25% of this Settlement as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## **The Court's Fairness Hearing**

### **20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on August 3, 2009, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom I2D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### **21. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### **22. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. **YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR OTHER DOCUMENTS MEMORIALIZING THE AGREEMENT BY MAKING A WRITTEN REQUEST TO CLASS COUNSEL AT THE ADDRESSES PROVIDED IN QUESTION 18 ABOVE.**

**I. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform Replacement Plumbing, as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section 3.A.1 and 3.A.2 below.

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder, Plumber, and/or their insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder, Plumber and/or their insurers will pay a total sum of \$800,000.00 to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty (30) days of notice of entry of the Court's Order granting preliminary approval of this Settlement. Class Counsel's court-approved fees and costs will be paid from the Settlement Fund. And after the final size of the Class is determined following trial and any appeals, this Fund will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2 above.

**A.1 Reimbursements.** In the limited circumstance where a Subclass Member or his agent or representative has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who has incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a

Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**A.3. Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all

available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction , repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any

appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon the funding of the Qualified Settlement Fund, a portion of the Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Settlement Subclass Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**5. Settled Claims.** Settled Claims are those claims from which you are releasing the Builder and its plumbing subcontractors, and include any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Settlement Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Settlement Subclass homes (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumber, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically exclude any claim for personal injury.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter:

(a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential property damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate, and expressly excludes, any claims for personal injury.

**6. Dismissal of Subclass Claims.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Settlement Funds to the Qualified Settlement Fund, all of the Subclass Members' claims against Builder and Plumber will be dismissed with prejudice.

**7. Releases.** As a result of the Settlement, the Subclass Representatives and the Settlement Subclass Members, by and through the Subclass Representatives, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Plumber of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumber (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

**A.** Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

**B.** Subclass Representatives and the Settlement Subclass Members, by and through their Subclass Representatives, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Settlement Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

**C.** The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Settlement Subclass Members and Subclass Representatives therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representatives and the Settlement Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Settlement Subclass Members.

**8. Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPLEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPLEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

HOMEOWNER OR CURRENT RESIDENT  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: August 3, 2009, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF ASTORIA HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Astoria Homes, LLC ("Builder") that contain Kitec or PlumbBetter plumbing systems and are located in the subdivisions known as Summer Heights, Autumn Ridge, Silverado Heights, and Stonegate ("the Settlement Subclass"). The purpose of this notice is to notify the Settlement Subclass members that a Settlement has been reached with Builder and Sharp Plumbing, Inc. ("Plumber"), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes ("the Settlement"). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on August 3, 2009, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DUEDATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 15, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 15, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 15, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a Settlement Fund in the amount of \$3,697,942 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to the Settlement Subclass homes. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPLEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPLEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$2,615,942 from Builder and/or its insurance carriers; and \$1,082,000 from Plumber and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbrian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representative is Larry Maier. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

### 7. Why have the Subclass, Builder, and Plumber decided to settle?

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

### 8. How do I know if I am part of this Settlement?

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located in one of the following developments: Summer Heights, Autumn Ridge, Silverado Heights, or Stonegate; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**II. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement, if any, are resolved, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**I2. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before July 15, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Astoria Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before July 15, 2009, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Subclass Settlement Objection*

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid 25% of the Settlement Fund as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipx Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on August 3, 2009, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. **YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT.** YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR OTHER DOCUMENTS MEMORIALIZING THE AGREEMENT BY MAKING A WRITTEN REQUEST TO CLASS COUNSEL AT THE ADDRESSES PROVIDED IN QUESTION 18 ABOVE.

1. **Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

2. **Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform Replacement Plumbing, as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section 3.A.1 and 3.A.2 below.

A. The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

B. Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Residences is completed.

3. **Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builders, Plumbers, and/or their insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder, Plumber and/or their insurers will pay a total sum of \$3,697,942 to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty days of notice of entry of the Court's Order granting preliminary approval of this Settlement. Class Counsel's court-approved fees and costs will be paid from the Settlement Fund. And after the final size of the Class is determined following trial and any appeals, this Fund will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2 above.

A.1 **Reimbursements.** In the limited circumstance where a Subclass Member or his agent or representative has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who has incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

A.2 **Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**A.3. Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon the funding of the Qualified Settlement Fund, a portion of the Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbings and/or Work. Each of the Settlement Subclass Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**5. Settled Claims.** Settled Claims are those claims from which you are releasing the Builder and its plumbing subcontractors, and include any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Settlement Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Settlement Subclass homes (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumber, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically exclude any claim for personal injury.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential property damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate, and expressly excludes, any claims for personal injury.

**6. Dismissal of Subclass Claims.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Settlement Funds to the Qualified Settlement Fund, all of the Subclass Members' claims against Builder and Plumber will be dismissed with prejudice.

7. **Releases.** As a result of the Settlement, the Subclass Representatives and the Settlement Subclass Members, by and through the Subclass Representatives, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Plumber of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumber (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

A. Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

B. Subclass Representatives and the Settlement Subclass Members, by and through their Subclass Representatives, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Settlement Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Settlement Subclass Members and Subclass Representatives therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representatives and the Settlement Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Settlement Subclass Members.

8. **Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipx Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipx Settlement – and the related funding of the Ipx Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipx Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: August 3, 2009, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF CONCORDIA HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Concordia Homes of Nevada, Inc. (“Builder”) that contain Kitec or PlumbBetter plumbing systems (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder and Classic Plumbing, Inc. (“Plumber”), the Plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on August 3, 2009, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>Due Date</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 15, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 15, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 15, 2009
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by this Settlement</b> and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a Settlement Fund in the amount of \$625,000 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 112 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder and/or Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPLEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPLEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$625,000 from Builder and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representatives are Yolanda Flores and Rebekah Ogle. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

### 7. Why have the Subclass, Builder, and Plumber decided to settle?

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

### 8. How do I know if I am part of this Settlement?

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system (such homes are typically located within the Builder's neighborhoods known as Sandy Ridge and Arbor Park, however the location of your home within this neighborhood does not automatically mean that it contains a Kitec plumbing system. A list of all addresses whose owners are members of this Settlement Subclass has been filed with the District Court); and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement, if any, are resolved, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members that have returned their Claim Form, with priority given to homes that are at greater risk for Kitec failures, if any.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB.** PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before July 15, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Concordia Homes Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before July 15, 2009, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

*Attention: Subclass Settlement Objections*

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid 25% of the Settlement Fund as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Iplex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on August 3, 2009, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR OTHER DOCUMENTS MEMORIALIZING THE AGREEMENT BY MAKING A WRITTEN REQUEST TO CLASS COUNSEL AT THE ADDRESSES PROVIDED IN QUESTION 18 ABOVE.

1. **Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

2. **Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform Replacement Plumbing, as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section 3.A.1 and 3.A.2 below.

A. The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

B. Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Residences is completed.

3. **Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and/or its insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder and/or its insurers will pay a total sum of **\$625,000** to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty days of notice of entry of the Court's Order granting preliminary approval of this Settlement. Class Counsel's court-approved fees and costs will be paid from the Settlement Fund. The remaining funds will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2 above.

A.1 **Reimbursements.** In the limited circumstance where a Subclass Member or his agent or representative has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who has incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

A.2 **Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

A.3. **Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to five (5) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4** **Claims Administration Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon the funding of the Qualified Settlement Fund, a portion of the total Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Settlement Subclass Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**5. Settled Claims.** Settled Claims are those claims from which you are releasing the Builder and its plumbing subcontractors, and include any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Settlement Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Settlement Subclass homes (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumber, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically exclude any claim for personal injury.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential property damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate, and expressly excludes, any claims for personal injury.

**6. Dismissal of Subclass Claims.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Settlement Funds to the Qualified Settlement Fund, all of the Subclass Members' claims against Builder and Plumber will be dismissed with prejudice.

**7. Releases.** As a result of the Settlement, the Subclass Representatives and the Settlement Subclass Members, by and through the Subclass Representatives, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Plumber of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumber (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

A. Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

B. Subclass Representatives and the Settlement Subclass Members, by and through their Subclass Representatives, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Settlement Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Settlement Subclass Members and Subclass Representatives therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representatives and the Settlement Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Settlement Subclass Members.

**8. Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: August 3, 2009, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF SIGNATURE HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Plaster Development Company, Inc., dba Signature Homes (“Builder”) that contain Kitec or PlumbBetter plumbing systems (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder and Classic Plumbing, Inc. and Sharp Plumbing, Inc. (“Plumbers”), the Plumbers responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on August 3, 2009, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DUUE DATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 15, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 15, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 15, 2009
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by this Settlement</b> and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – **and the Due Dates for each** – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a Settlement Fund in the amount of \$6,839,484 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems ("the Settlement Fund"). This Settlement resolves claims related to 1,078 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder and Plumbers will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$4,683,484 from Builder and/or its insurance carriers; \$142,000 from Sharp Plumbing, Inc. and/or its insurance carriers, and \$2,014,000 from Classic Plumbing, Inc. and/or its insurance carriers. Builder has already replumbed 44 of the homes in the Settlement Subclass; accordingly, Builder will receive a refund of \$88,000 of the Ipex Settlement and an additional refund of \$88,000 from the Classic contribution, for a total debit from this settlement of \$176,000, as its pro rata share of these additional settlement funds. The refund will be paid after appeals have been exhausted.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbrian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representative is Nancy Drapeau. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

### 7. Why have the Subclass, Builder, and Plumbers decided to settle?

The Court has not decided in favor of the Subclass, Builder, or Plumbers. Builder and Plumbers vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumbers have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system (such homes are typically located within the Builder's neighborhoods known as Crescendo, Lodge 2, Mojave Estates, Ridge II & III, Sterling, and Yorkshire Heights, however the location of your home within one of these neighborhoods does not automatically mean that it contains a Kitec plumbing system. A list of all addresses whose owners are members of this Settlement Subclass has been filed with the District Court); and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before July 15, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Signature Homes Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before July 15, 2009, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

*Attention: Subclass Settlement Objections*

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid 25% of the Settlement Fund as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Iplex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on August 3, 2009, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. **YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR OTHER DOCUMENTS MEMORIALIZING THE AGREEMENT BY MAKING A WRITTEN REQUEST TO CLASS COUNSEL AT THE ADDRESSES PROVIDED IN QUESTION 18 ABOVE.**

**1. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform Replacement Plumbing, as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section 3.A.1 and 3.A.2 below.

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builders, Plumbers, and/or their insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder, Plumbers and/or their insurers will pay a total sum of \$6,839,484 to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty days of notice of entry of the Court's Order granting preliminary approval of this Settlement. After the final size of the Class is determined following trial and any appeals, the Builder will receive a refund from this Qualified Settlement Fund in the amount of \$176,000. Class Counsel's court-approved fees and costs will be paid from the Settlement Fund. The remaining funds remaining in this Qualified Settlement Fund will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2 above.

**A.1 Reimbursements.** In the limited circumstance where a Subclass Member or his agent or representative has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who has incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a

Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**A.3. Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all

available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any

appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon the funding of the Qualified Settlement Fund, a portion of the total Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbings and/or Work. Each of the Settlement Subclass Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**5. Settled Claims.** Settled Claims are those claims from which you are releasing the Builder and its plumbing subcontractors, and include any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Settlement Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Settlement Subclass homes (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumbers, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically exclude any claim for personal injury.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter:

(a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential property damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate, and expressly excludes, any claims for personal injury.

**6. Dismissal of Subclass Claims.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumbers of the Settlement Funds to the Qualified Settlement Fund, all of the Subclass Members' claims against Builder and Plumbers will be dismissed with prejudice.

7. **Releases.** As a result of the Settlement, the Subclass Representatives and the Settlement Subclass Members, by and through the Subclass Representatives, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Plumbers of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder and Plumbers (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumbers (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

A. Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

B. Subclass Representatives and the Settlement Subclass Members, by and through their Subclass Representatives, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Settlement Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Settlement Subclass Members and Subclass Representatives therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representatives and the Settlement Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Settlement Subclass Members.

8. **Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Iplex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Iplex Settlement – and the related funding of the Iplex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Iplex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

HOMEOWNER OR CURRENT RESIDENT  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
**(ELECTRONIC FILING CASE)**

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: August 3, 2009, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF PLATIS CONSTRUCTION, INC. HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Platis Construction, Inc. (“Builder”) that contain Kitec or PlumbBetter plumbing systems and are located in the subdivisions known as Desert Inn Estates, Silver Hills Estates, and Mesa Vista Estates (“the Settlement Subclass”). The purpose of this notice is to notify the Settlement Subclass members that a Settlement has been reached with Builder and Sharp Plumbing, Inc. and DR Bowles Plumbing (“Plumbers”), the plumbers responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on August 3, 2009, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 15, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 15, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 15, 2009
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by this Settlement</b> and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the **Due Dates** for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a Settlement Fund in the amount of \$372,000 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to approximately 113 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder and Plumbers will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass. Additionally, Builder has assigned to the Class its claims against Lloyd's of London for bad faith (i.e., breach of the implied covenant of good faith and fair dealing) and indemnification, which the Class may pursue at its option.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$150,000 from Builder and/or its insurance carriers; \$184,000 from Sharp Plumbing, Inc. and/or its insurance carriers, and \$38,000 from DR Bowles and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representative is Frank Mastro. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

### 7. Why have the Subclass, Builder, and Plumbers decided to settle?

The Court has not decided in favor of the Subclass, Builder, or Plumbers. Builder and Plumbers vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumbers have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located in one of the following developments: Desert Inn Estates, Silver Hills Estates, or Mesa Vista Estates; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, then the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was signed.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members that have returned their Claim Form, with priority given to homes that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before July 15, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement in spite of objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Platis Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before July 15, 2009, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumbers to be paid 25% of the Settlement Fund as their fee as part of this Settlement. This fee will not reduce the amount ultimately paid to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Iplex Settlement or in conjunction with any other settlement or partial settlement in this action. The Court must approve this fee as reasonable during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on August 3, 2009, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action, including all Settlement documents, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. **YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT.** **YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS BY MAKING A WRITTEN REQUEST TO KEMP, JONES & COULTHARD, LLP, OR LYNCH, HOPPER & SALZANO, LLP, CLASS COUNSEL, AT THE ADDRESSES PROVIDED IN THIS PRELIMINARY NOTICE.**

**1. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform "Replacement Plumbing," as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE Settlement Subclass MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT,** except in those limited circumstances provided for in Section 3.A.1 and 3.A.2 below.

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builders and/or its insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder, Plumber and/or their insurers will pay a total sum of \$372,000 to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty days of notice of entry of the Court's Order granting preliminary approval of this Settlement. After the final size of the Class is determined following trial and any appeals, this Fund will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2 above.

**A.1 Reimbursements.** In the limited circumstance where a Subclass Member or his agent or representative has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who has incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a

Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**A.3 Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all

available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any

appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon the funding of the Qualified Settlement Fund, a portion of the Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released for payment to Class Counsel.

**4. Stipulated Judgment.** Builder has also stipulated with the Class to have judgment entered against Builder in the amount of \$1,412,500, and the Class has covenanted and agreed not to execute that judgment against Builder, Christos Platis, Anna Platis, Nasia Development, LLC, Calvert Insurance, and/or First Financial Insurance Company.

**5. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Settlement Subclass Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**6. Settled Claims.** Settled Claims are those claims from which you are releasing the Builder and its plumbing subcontractors, and include any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Settlement Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Settlement Subclass homes (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumbers, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically exclude any claim for personal injury.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter:

(a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential property damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate, and expressly excludes, any claims for personal injury.

7. **Dismissal of Subclass Claims.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumbers of the Settlement Funds to the Qualified Settlement Fund, all of the Subclass Members' claims against Builder and Plumbers will be dismissed with prejudice.

8. **Releases.** As a result of the Settlement, the Subclass Representatives and the Settlement Subclass Members, by and through the Subclass Representatives, on their own behaves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Plumbers of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder and Plumbers (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumbers (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action. This release expressly includes claims against Lloyd's of London.

A. Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

B. Subclass Representatives and the Settlement Subclass Members, by and through their Subclass Representatives, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Settlement Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Settlement Subclass Members and Subclass Representatives therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representatives and the Settlement Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Settlement Subclass Members.

9. **Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: August 3, 2009, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF HOMES BUILT BY RL HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by RL Homes, LLC, RL Homes, JV, LLC, or RL HOMES, LLC, a Nevada Limited Liability Company, ("Builder") that contain Kitec or PlumbBetter plumbing systems ("the Settlement Subclass") to notify the Settlement Subclass members that a Settlement has been reached with Builder and Classic Plumbing, Inc. ("Plumber"), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes ("the Settlement"). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on August 3, 2009, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DUE DATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 15, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 15, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 15, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

**BASIC INFORMATION****1. Why did I get this Notice?**

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

**2. What is this lawsuit about?**

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumber. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

**3. What will this Settlement provide Subclass homeowners if approved by the Court?**

If approved by the Court, this Settlement will create a Settlement Fund in the amount of \$500,000 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 106 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the Settlement Subclass homes with a Court-approved repair.

**4. Are additional funds anticipated from other parties?**

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

**5. How will this Settlement be funded?**

The specific funding for this Settlement is as follows: \$230,000 from Builder and/or its insurance carriers; and \$270,000 from Classic Plumbing, Inc. and/or its insurance carriers.

**6. Why is this a class action, and what is a Subclass?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbrian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representative is Chris Smith. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

**7. Why have the Subclass, Builder, and Plumber decided to settle?**

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system (such homes are typically located within the Builder's neighborhood known as Willowbrook, however the location of your home within this neighborhood does not automatically mean that it contains a Kitec plumbing system. A list of all addresses whose owners are members of this Settlement Subclass has been filed with the District Court); and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before July 15, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The RL Homes Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before July 15, 2009, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Subclass Settlement Objections*

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid 25% of the Settlement Fund as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on August 3, 2009, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. **YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR OTHER DOCUMENTS MEMORIALIZING THE AGREEMENT BY MAKING A WRITTEN REQUEST TO CLASS COUNSEL AT THE ADDRESSES PROVIDED IN QUESTION 18 ABOVE.**

**1. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform Replacement Plumbing, as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section 3.A.1 and 3.A.2 below.

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder, Plumber, and/or their insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder, Plumber and/or their insurers will pay a total sum of **\$500,000** to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty days of notice of entry of the Court's Order granting preliminary approval of this Settlement. Class Counsel's court-approved fees and costs will be paid from the Settlement Fund. After the final size of the Class is determined following trial and any appeals, the remaining funds will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2 above.

**A.I Reimbursements.** In the limited circumstance where a Subclass Member or his agent or representative has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who has incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**A.3. Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon the funding of the Qualified Settlement Fund, a portion of the Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Settlement Subclass Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**5. Settled Claims.** Settled Claims are those claims from which you are releasing the Builder and its plumbing subcontractors, and include any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Settlement Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Settlement Subclass homes (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumber, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically exclude any claim for personal injury.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential property damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate, and expressly excludes, any claims for personal injury.

**6. Dismissal of Subclass Claims.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Settlement Funds to the Qualified Settlement Fund, all of the Subclass Members' claims against Builder and Plumber will be dismissed with prejudice.

7. **Releases.** As a result of the Settlement, the Subclass Representatives and the Settlement Subclass Members, by and through the Subclass Representatives, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Plumber of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumber (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

A. Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

B. Subclass Representatives and the Settlement Subclass Members, by and through their Subclass Representatives, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Settlement Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Settlement Subclass Members and Subclass Representatives therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representatives and the Settlement Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Settlement Subclass Members.

8. **Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Iplex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Iplex Settlement – and the related funding of the Iplex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Iplex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
**(ELECTRONIC FILING CASE)**

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

**Hearing Date & Time: August 3, 2009, at 1:30 p.m.**

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF SBA DEVELOPMENT HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by SBA Development, Inc. (“Builder”) that contain Kitec or PlumbBetter plumbing systems and are located in the subdivision known as Tuscany Village North Shores (“the Settlement Subclass”). The purpose of this notice is to notify the Settlement Subclass members that a Settlement has been reached with Builder and Pioneer Plumbing, Inc. (“Plumber”), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on August 3, 2009, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 15, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 15, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 15, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a Settlement Fund in the amount of \$222,000 ("the Settlement Fund") to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems, plus an additional \$10,000 as reimbursement of a portion of Class Counsel's mediation fees, for a total settlement value of \$232,000. This Settlement resolves claims related to 48 homes constructed and sold by Builder. The Settlement Fund will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$150,000 from Builder and/or its insurance carriers for the settlement, plus \$10,000 for partial reimbursement of Class Counsel's bill for mediator fees; and \$72,000 from Plumber and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlag, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representative is Michael Ventriglia. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

### 7. Why have the Subclass, Builder, and Plumber decided to settle?

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located in one of the following developments: Summer Heights, Autumn Ridge, Silverado Heights, or Stonegate; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement, if any, are resolved, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before July 15, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The SBA Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before July 15, 2009, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Subclass Settlement Objection*

## **IF YOU DO NOTHING**

### **17. What happens if I do nothing?**

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## **THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT**

### **18. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### **19. How will these attorneys be paid?**

Class Counsel negotiated with Builder and Plumber to be paid 25% of the Settlement Fund as their fee, and Builder is also tendering \$10,000 as a partial reimbursement of Class Counsel's costs related to the mediator's bill, as part of this Settlement. This fee and partial cost reimbursement will not reduce the amount dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## **The Court's Fairness Hearing**

### **20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on August 3, 2009, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### **21. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### **22. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. **YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT.** YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR OTHER DOCUMENTS MEMORIALIZING THE AGREEMENT BY MAKING A WRITTEN REQUEST TO CLASS COUNSEL AT THE ADDRESSES PROVIDED IN QUESTION 18 ABOVE.

**1. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform Replacement Plumbing, as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT,** except in those limited circumstances provided for in Section 3.A.1 and 3.A.2 below.

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder, Plumber, and/or their insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder, Plumber and/or their insurers will pay a total sum of **\$232,000** to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty days of notice of entry of the Court's Order granting preliminary approval of this Settlement. Class Counsel's court-approved fees and costs will be paid from the Settlement Fund. And after the final size of the Class is determined following trial and any appeals, the remaining funds will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2 above.

**A.I Reimbursements.** In the limited circumstance where a Subclass Member or his agent or representative has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who has incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a

Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**A.3. Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all

available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any

appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon the funding of the Qualified Settlement Fund, a portion of the

Qualified Settlement Fund equal to 25% of the Settlement Fund (plus any court-approved and awarded costs) plus \$10,000 in mediation cost reimbursement shall be immediately designated "Class Counsel's Fees and Costs" and released for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Settlement Subclass Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**5. Settled Claims.** Settled Claims are those claims from which you are releasing the Builder and its plumbing subcontractors, and include any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Settlement Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Settlement Subclass homes (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumber, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically exclude any claim for personal injury.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter:

(a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential property damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate, and expressly excludes, any claims for personal injury.

**6. Dismissal of Subclass Claims.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Settlement Funds to the Qualified Settlement Fund, all of the Subclass Members' claims against Builder and Plumber will be dismissed with prejudice.

**7. Releases.** As a result of the Settlement, the Subclass Representatives and the Settlement Subclass Members, by and through the Subclass Representatives, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Plumber of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumber (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

**A.** Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

**B.** Subclass Representatives and the Settlement Subclass Members, by and through their Subclass Representatives, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Settlement Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

**C.** The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Settlement Subclass Members and Subclass Representatives therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representatives and the Settlement Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Settlement Subclass Members.

**8. Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipxex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipxex Settlement – and the related funding of the Ipxex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipxex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident  
Street Address  
City, State Zip

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
**(ELECTRONIC FILING CASE)**

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: August 3, 2009, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF WILLIAM LYON HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by William Lyon Homes, Inc. (“Builder”) that contain Kitec or PlumbBetter plumbing systems and are located within the Belvedere Development (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder and Sharp Plumbing, Inc. (“Plumber”), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on August 3, 2009, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 15, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 15, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 15, 2009
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by this Settlement</b> and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement -- and the Due Dates for each -- are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a Settlement Fund in the amount of \$516,00 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 78 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$360,000 from Builder and/or its insurance carriers; and \$156,000 from Sharp Plumbing, Inc. and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingchlag, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representative is Vincent Marino. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

### 7. Why have the Subclass, Builder, and Plumber decided to settle?

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

### 8. How do I know if I am part of this Settlement?

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located within the Builder's Belvedere development; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before July 15, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The William Lyon Homes Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before July 15, 2009, with copies sent to the following address:  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Subclass Settlement Objections*

## **IF YOU DO NOTHING**

### **17. What happens if I do nothing?**

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## **THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT**

### **18. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### **19. How will these attorneys be paid?**

Class Counsel negotiated with Builder and Plumber to be paid 25% of the Settlement Fund as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## **The Court's Fairness Hearing**

### **20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on August 3, 2009, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### **21. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### **22. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## **Getting More Information**

### **23. Where can I receive more information about this Settlement?**

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.

## **SUMMARY OF SETTLEMENT AGREEMENT**

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. **YOU MAY ALSO REVIEW, IN CONSULTATION WITH SUCH ADVISORS, SUCH AS YOUR ATTORNEY, AS YOU DEEM APPROPRIATE, THE SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS FOR A FULL EXPLANATION OF THE SETTLEMENT IN ORDER TO FAMILIARIZE YOURSELF WITH THE PRECISE TERMS OF THE SETTLEMENT AND TO DETERMINE THE EFFECT ON YOU OF THE SETTLEMENT. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR OTHER DOCUMENTS MEMORIALIZING THE AGREEMENT BY MAKING A WRITTEN REQUEST TO CLASS COUNSEL AT THE ADDRESSES PROVIDED IN QUESTION 18 ABOVE.**

1. **Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

2. **Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator ("Approved Plumbing Contractors") will perform Replacement Plumbing, as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section 3.A.1 and 3.A.2 below.

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Residences is completed.

3. **Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder, Plumber, and/or their insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder, Plumber and/or their insurers will pay a total sum of \$516,000 to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty days of notice of entry of the Court's Order granting preliminary approval of this Settlement. Class Counsel's court-approved fees and costs will be paid from the Settlement Fund. After the final size of the Class is determined following trial and any appeals, the remaining funds will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2 above.

**A.1 Reimbursements.** In the limited circumstance where a Subclass Member or his agent or representative has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who has incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 Subclass Members Who Previously Accepted Funds from Builders and Executed a Release.** If a Subclass Member previously received funds from Builders to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount the Subclass Member accepted from Builders. To request reimbursement for reasonable costs above the amount previously accepted from Builders, Subclass Member must submit a Claim Form and any supporting documentation to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response within 60 days of receipt of the Claim Form. If the request is approved, additional reimbursement for reasonable costs may be provided from the Contingency Fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**A.3 Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon the funding of the Qualified Settlement Fund, a portion of the Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Settlement Subclass Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**5. Settled Claims.** Settled Claims are those claims from which you are releasing the Builder and its plumbing subcontractors, and include any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Settlement Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Settlement Subclass homes (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumber, for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically exclude any claim for personal injury.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential property damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate, and expressly excludes, any claims for personal injury.

**6. Dismissal of Subclass Claims.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Settlement Funds to the Qualified Settlement Fund, all of the Subclass Members' claims against Builder and Plumber will be dismissed with prejudice.

**7. Releases.** As a result of the Settlement, the Subclass Representatives and the Settlement Subclass Members, by and through the Subclass Representatives, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder and Plumber of their respective shares of the Settlement – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder and Plumber (including any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumber (and any and all of their employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

A. Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

B. Subclass Representatives and the Settlement Subclass Members, by and through their Subclass Representatives, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Settlement Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Settlement Subclass Members and Subclass Representatives therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representatives and the Settlement Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Settlement Subclass Members.

**8. Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Iplex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Iplex Settlement – and the related funding of the Iplex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Iplex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

10001  
Homeowner or Current Resident

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: SEPTEMBER 9, 2009, at 9:00 a.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF CONCORDIA, DR HORTON, H&H DEVELOPMENT, JOHN LAING HOMES, RHODES HOMES, SIGNATURE HOMES, AND WEXFORD HOMES CONTAINING KITEC PLUMBING SYSTEMS INSTALLED BY CLASSIC PLUMBING – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Concordia Homes of Nevada, Inc. in the Arbor Park and Sandy Ridge developments; D.R. Horton, Inc. in the Anthem Estates, Bella Vincenza, Cobblestone Cove, Cobblestone Landing, and Cobblestone Manor developments; H&H Development, Ltd. in the development known as the Grove; John Laing Homes in the developments known as Country Garden (aka Arbor Gate or Arbor Park), Four seasons (aka Orchard Valley at Elkhorn Springs), Moondance at Silverado Ranch (aka Sage Creek), Paloma (aka Wildflower or Orchard Springs at Elkhorn Valley), Solara (aka Dakota), and Tule Springs Ranch (aka Four Winds or Whisper Creek); Rhodes Design and Development Corporation dba Rhodes Homes in The Preserves; Plaster Development Company, Inc. dba Signature Homes in the developments known as Crescendo, Ridge II, Ridge III, Sterling, and Yorkshire Heights; and Wexford Homes, Inc. in the developments known as Gleneagles and Sunrise Village that are believed to contain Kitec or PlumbBetter plumbing systems (hereinafter “the Classic Plumbed Homes”) TO NOTIFY THESE CLASS MEMBERS THAT A SETTLEMENT HAS BEEN REACHED WITH CLASSIC PLUMBING, INC. (“PLUMBER”) WITH RESPECT TO THE CLASSIC PLUMBLED HOMES THAT WILL CREATE A SETTLEMENT FUND FOR THE BENEFIT OF THE OWNERS OF THE CLASSIC-PLUMBLED HOMES TO CONTRIBUTE TOWARDS THE REPLUMB OF THESE HOMES (“THE CLASSIC SETTLEMENT”).

**Do not hire or contact an independent plumber to perform a replumb. Please read this notice in its entirety for information regarding your rights to the replumb.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Classic Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Classic Settlement. The hearing will be held on SEPTEMBER 9, 2009, at 9:00 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom I2D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada. Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DU<sup>E</sup> DATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Classic Settlement. After your Request to Join The Classic Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	AUGUST 21, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	AUGUST 21, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	AUGUST 21, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if your home is one of the Classic-plumbed Homes.	N/A

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Partial Class Settlement under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Class who is impacted by this Partial Settlement. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Homeowners if approved by the Court?

If approved by the Court, this Partial Settlement will create a settlement fund in the amount of **\$5,245,000** to be used for the benefit of the owners of the Classic Plumbing Homes to help pay for the replumb of homes with Kitec plumbing systems. This Partial Settlement resolves claims related to 2,688 homes plumbed by Classic Plumbing. The funds paid by or on behalf of Plumber will be combined with a share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below) and any other funds recovered from other parties, for the replumb of the Classic Plumbing Homes with a Court-approved repair. The money received under this settlement will not be allocated to the Classic-plumbed Homes on a pro-rata basis. Rather, the allocation, if any, is based on various considerations that have been presented to the Court for approval.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Additionally, Class Counsel is continuing to pursue the builders responsible for constructing the Classic-plumbed Homes for additional funds to benefit the Classic-plumbed Homes; settlements with some builders including but not necessarily limited to Concordia, D.R. Horton, H&H Development, Signature Homes, and Wexford Homes have already been reached and preliminarily approved by the Court. You may therefore receive a separate notice of these settlements. If you are the owner of a Classic-plumbed Home built by Concordia or Signature, you should have already received that notice; if you own a Classic-plumbed Home built by D.R. Horton, H&H, or Wexford, you should be receiving a separate notice contemporaneously with this notice.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$5,245,000 from Plumber and/or its insurance carriers.

### 6. Why is this a class action and what is a class?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre.

**7. Why have the Class and Plumber decided to settle?**

The Court has not decided in favor of the Class or Plumber. Plumber vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Plumber contends that its plumbing systems were properly constructed and installed in accordance with appropriate care, relevant standards, and “good practice,” that Class claims have no basis in law or fact, that Plumber has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You are the owner of a home constructed by the following homebuilders in the developments described below: Concordia Homes of Nevada, Inc. in the Arbor Park and Sandy Ridge developments; D.R. Horton, Inc. in the Anthem Estates, Bella Vincenza, Cobblestone Cove, Cobblestone Landing, and Cobblestone Manor developments; H&H Development, Ltd. in the development known as the Grove; John Laing Homes in the developments known as Country Garden (aka Arbor Gate or Arbor Park), Four seasons (aka Orchard Valley at Elkhorn Springs), Moondance at Silverado Ranch (aka Sage Creek), Paloma (aka Wildflower or Orchard Springs at Elkhorn Valley), Solara (aka Dakota), and Tule Springs Ranch (aka Four Winds or Whisper Creek); Rhodes Design and Development Corporation dba Rhodes Homes in The Preserves; Plaster Development Company, Inc. dba Signature Homes in the developments known as Crescendo, Ridge II, Ridge III, Sterling, and Yorkshire Heights; and Wexford Homes, Inc. in the developments known as Gleneagles and Sunrise Village; b) That home contains, or at any time contained, a Kitec or PlumbBetter plumbing system installed by Plumber; and c) You did not previously opt out of this class action. If you own a home effected by this Settlement but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court’s final approval and advised of the steps that you need to take in order to participate in the benefits provided by the Settlement. The notice of the Court’s final approval will explain what steps, if any, you need to take and will include any necessary claims forms that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all of the parties will be restored to the position they were in before the Settlement was reached.

**11. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

This is not a cash settlement. Any benefits obtained for the Class under this settlement will only go towards funding a replumb of your Kitec or PlumbBetter plumbing system. If anything, you will only be entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**12. If you previously excluded yourself as a member from the Class Action, can you still accept the benefits of this Settlement?**  
Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 17 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before AUGUST 21, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**13. What if I don’t want to be part of this Settlement?**

If you do not wish to receive the benefits provided by this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Plumber on these claims later.

**14. If I exclude myself, may I pursue a claim against Plumber independently?**

No. If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Plumber or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**15. How do I tell the Court if I do not like the Settlement?**

If you own a Classic-plumbed Home, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may **approve the Settlement despite objections, and all members of the Class will be bound by this Partial Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Classic Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Classic Settlement.
- Your address to confirm that you are the owner of a Classic-plumbed Home.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before AUGUST 21, 2009, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

*Attention: Classic Settlement Objections*

**IF YOU DO NOTHING**

**16. What happens if I do nothing?**

If you do nothing, **you will be bound by this Settlement** and will be eligible to receive the benefits of the Settlement if you are the owner of a Classic-plumbed Home. If this Settlement is finally approved by the Court, you will receive further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Plumber on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Plumber.

**THE LAWYERS WHO REPRESENT THE CLASS AND WHO NEGOTIATED THIS SETTLEMENT**

**17. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes the owners of Classic-plumbed Homes. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard

Francis Lynch, Charles Hopper, & Sergio Salzano

Kemp, Jones & Coulthard, LLP

Lynch, Hopper & Salzano, LLP

Wells Fargo Tower, 17<sup>th</sup> Floor

231 South Third Street, #130

3800 Howard Hughes Parkway

Las Vegas, NV 89101

Las Vegas, NV 89169

**18. How will these attorneys be paid?**

Class Counsel negotiated with Plumber to be paid 25% of this Settlement as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Classic-plumbed Homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on **SEPTEMBER 9, 2009**, at 9:00 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### 20. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 21. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 22. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 17 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Plumber and/or its insurers in settlement of the claims of the owners of the Classic-plumbed Homes (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Plumber and/or its insurers will pay a total sum of \$5,245,000 to the Qualified Settlement Fund for the benefit of the owners of the Classic-plumbed Homes within 90 days following notice of entry of the Court's Order granting preliminary approval of this Partial Settlement.

**2. Use of the Qualified Settlement Fund.** Upon Plumber's funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the owners of the Classic-plumbed Homes via settlement or otherwise with the goal and intention of funding full replumbs of the Classic-plumbed Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Classic-plumbed Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Court-selected Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Classic-plumbed Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Classic-plumbed Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Plumber or from the Claims Administrator. However, it is the intent of the Parties that Plumber will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Classic-plumbed Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Classic-plumbed Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Plumber, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Classic-plumbed Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Classic-plumbed Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Classic-plumbed Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Plumbers and Executed a Release.** If the owner of a Classic-plumbed Home previously received funds from Plumber or the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Class Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted from Plumbers, Class Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Plumber of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Plumber relating to the Classic-plumbed Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the owners of the Classic-plumbed Homes will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Plumber from any and all conceivable losses, damages or injuries arising from or in any way related to the Classic-plumbed Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Plumber arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Classic-plumbed Homes, specifically excluding any claims for personal injury. The owners of the Classic-plumbed Homes reserve any claims, rights, or remedies against: 1) any parties other than Plumber, specifically including but not limited to the builders of their Classic-plumbed Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing. Additionally, the owners of the Classic-plumbed Homes recognize that they may have some claim, demand, or cause of action against the Plumber of which they are totally unaware and

5. unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Plumber. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the owners of the Classic-plumbed Homes therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**6. Potential Risk to the Owners of the Classic-plumbed Homes.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the owners of the Classic-plumbed Homes bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Classic-plumbed Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the owners of the Classic-plumbed Homes.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date &amp; Time: SEPTEMBER 9, 2009, at 9:00 a.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF D.R. HORTON HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by D.R. HORTON, Inc. (“Builder”) that are believed to contain Kitec or PlumbBetter plumbing systems and are located within the developments known as Anthem Estates, Bella Vincenza, Cobblestone Cove, Cobblestone Landing and Cobblestone Manor (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on SEPTEMBER 9, 2009, at 9:00 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUUE DATE
WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS (“OPT-OUT”) AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB	If you previously filed a request for exclusion from the class (“Opt-Out”) but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	AUGUST 21, 2009
ACCEPT SETTLEMENT & SEND IN CLAIM FORM	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
OBJECT TO SETTLEMENT	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	AUGUST 21, 2009
APPEAR AT FAIRNESS HEARING	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	AUGUST 21, 2009
DO NOTHING	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund in the amount of \$1,309,900 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 368 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below) and any other funds recovered, or which will be recovered in the future for the replumbing of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass. Additionally, Class Counsel has reached a tentative settlement with Classic Plumbing for additional funds to benefit the Settlement Subclass Homes. A separate Notice regarding the tentative settlement with Classic benefitting the Settlement Subclass Homes is enclosed with this Notice.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$1,309,900 from Builder and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representatives are Evan Levy and Mary Levy. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

### 7. Why have the Subclass and Builder decided to settle?

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in

accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located within Anthem Estates, Bella Vincenza, Cobblestone Cove, Cobblestone Landing, or Cobblestone Manor developments; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, and as soon as sufficient funds necessary to perform full replumbs of the Settlement Subclass Homes have been aggregated and collected, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before AUGUST 21, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The D.R. Horton Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before AUGUST 21, 2009, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

*Attention: Subclass Settlement Objections*

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder to be paid 25% of this Settlement as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on SEPTEMBER 9, 2009, at 9:00 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

**22. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

**Getting More Information**

**23. Where can I receive more information about this Settlement?**

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

**SUMMARY OF SETTLEMENT AGREEMENT**

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents, to the extent that written documents have been prepared, for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 18 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and/or its insurers in settlement of the claims of the Settlement Subclass Members (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder and/or its insurers will pay a total sum of \$1,309,900 to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members within 30 days following notice of entry of the Court's Order granting preliminary approval of this Settlement.

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the Settlement Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Settlement Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Settlement Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Settlement Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Settlement Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Settlement Subclass Home under the Settlement Agreement will be accomplished at the direction of the

Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Settlement Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Settlement Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Settlement Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Settlement Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder relating to the Settlement Subclass Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Settlement Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the Settlement Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Settlement Subclass Homes, specifically excluding any claims for personal injury. The Settlement Subclass Members reserve any claims, rights, or remedies against: 1) any parties other than Builder, specifically including but not limited to the builders of their Settlement Subclass Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing. Additionally, the Settlement Subclass Members recognize that they may have some claim, demand, or cause of action against the Builder of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Settlement Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Settlement Subclass Members.** This Settlement is **NOT CONTINGENT** upon the outcome of the Iplex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Iplex Settlement – and the related funding of the Iplex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Iplex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Settlement Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

10094  
Homeowner or Current Resident

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
**(ELECTRONIC FILING CASE)**

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: SEPTEMBER 9, 2009, at 9:00 a.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF DESERT WIND HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by DESERT WIND HOMES OF NEVADA II, INC. (“Builder”) that are believed to contain Kitec or PlumbBetter plumbing systems and are located within the development known as Aventine, or are one of the three model homes in the Desert Cove neighborhood (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder and LAKEWOOD PLUMBING (“Plumber”), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on SEPTEMBER 9, 2009, at 9:00 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DUUE DATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	AUGUST 21, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	AUGUST 21, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	AUGUST 21, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund in the amount of \$302,400 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to the Settlement Subclass Homes. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). Accordingly, this Settlement completely resolves all claims in this class action on behalf of the Settlement Subclass members. The combined settlement funds will then be used on behalf of the Settlement Subclass to fund the replumb of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass. Additionally, Class Counsel is continuing to pursue the plumbers responsible for the installation of the Kitec/PlumbBetter plumbing systems for additional funds to benefit the Settlement Subclass Homes.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$194,400 from Builder and/or its insurance carriers; and \$108,000 from Plumber and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representative is Barry Sweet. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

**7. Why have the Subclass, Builder, and Plumber decided to settle?**

The Court has not decided in favor of the Subclass or Builder or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located within Aventine development or is one of the three homes originally constructed as models for the Desert Cove development ("the Settlement Subclass Homes"); and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, and as soon as sufficient funds necessary to perform full replumbs of the Settlement Subclass Homes have been aggregated and collected, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before AUGUST 21, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

## YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

### 16. How do I tell the Court if I do not like the Settlement?

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Desert Wind Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before AUGUST 21, 2009, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

*Attention: Subclass Settlement Objections*

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid 25% of this Settlement as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on **SEPTEMBER 9, 2009**, at 9:00 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents, to the extent that written documents have been prepared, for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 18 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and Plumber and/or their insurers in settlement of the claims of the Settlement Subclass Members (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder, Plumber and/or their insurers will pay a total sum of **\$302,400** to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members within 30 days following notice of entry of the Court's Order granting preliminary approval of this Settlement.

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the Settlement Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Settlement Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Settlement Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total

number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Settlement Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Settlement Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber will be entitled to a full and complete release of the Settlement Subclass Members' claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Settlement Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Plumber, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Settlement Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Settlement Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Settlement Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Settlement Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder and Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order Approving the Settlement, all of the claims against Builder and Plumber relating to the Settlement Subclass Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Settlement Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder and Plumber from any and all conceivable losses, damages or injuries arising from or in any way related to the Settlement Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder and Plumber arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Settlement Subclass Homes, specifically excluding any claims for personal injury. The Settlement Subclass Members reserve any claims, rights, or remedies against: 1) any parties other than Builder and Plumber, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing. Additionally, the Settlement Subclass Members recognize that they may have some claim, demand, or cause of action against the Builder or Plumber of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against Builder and Plumber. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Settlement Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Settlement Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

10001  
Homeowner or Current Resident

<p style="text-align: center;"><b>DISTRICT COURT</b> <b>CLARK COUNTY, NEVADA</b></p> <p><b>IN RE KITEC FITTING LITIGATION</b> Case No.: A493302</p> <p style="text-align: right;">Dept. No.: XVI (ELECTRONIC FILING CASE)</p> <p style="text-align: center;"><b>NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT</b> <b>NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING</b></p> <p style="text-align: center;">Hearing Date &amp; Time: SEPTEMBER 9, 2009, at 9:00 a.m.</p> <p><i>A court of law authorized this Notice. It is not from a lawyer. You are not being sued.</i></p>	
--	--

**TO:** ALL OWNERS OF RECORD OF PULTE HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Pulte Home Corp. or PN II, Inc. (“Builder”) that are believed to contain Kitec or PlumbBetter plumbing systems and are located within the developments known as Cambridge Heights, Cortona Hills, Eagle Creek South, Eagle Creek Heights (aka Eagle Creek North), Eagle Crossing, Eagle Crossing Phase II, Las Palmeras Heights, Las Palmeras Point, and Mill Creek (part of the Lynbrook Master Planned Community) (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder that will create a settlement fund for the benefit of the Settlement Subclass members to pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on SEPTEMBER 9, 2009, at 9:00 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DUE DATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	AUGUST 21, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	AUGUST 21, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	AUGUST 21, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund in the amount of \$3,437,500 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to approximately 550 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below) and any other funds recovered, or which will be recovered in the future for the replumbing of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$3,437,500 from Builder and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representative is Kurt Hoopes. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

**7. Why have the Subclass and Builder decided to settle?**

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and “good practice,” that Class claims have no basis in law or fact, that Builder has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located within the following developments: Cambridge Heights, Cortona Hills, Eagle Creek South, Eagle Creek Heights (aka Eagle Creek North), Eagle Crossing, Eagle Crossing Phase II, Las Palmeras Heights, Las Palmeras Point, or Mill Creek (part of the Lynbrook Master Planned Community); and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court’s final approval and provided with a Claim Form to request a replumb. The notice of the Court’s final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, and as soon as sufficient funds necessary to perform full replumbs of the Settlement Subclass Homes have been aggregated and collected, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, **you are only entitled to a replumb, you are not entitled to a monetary payment.** If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. **If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before AUGUST 21, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.**

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don’t want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. **If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.**

**15. If I exclude myself, may I pursue a claim against Builder independently?**

**If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.**

## YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

### 16. How do I tell the Court if I do not like the Settlement?

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Pulte Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before AUGUST 21, 2009, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

*Attention: Subclass Settlement Objections*

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

**19. How will these attorneys be paid?**

Class Counsel negotiated with Builder to be paid 25% of this Settlement as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Iplex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

**The Court's Fairness Hearing**

**20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on SEPTEMBER 9, 2009, at 9:00 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

**21. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

**22. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

**Getting More Information**

**23. Where can I receive more information about this Settlement?**

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

**SUMMARY OF SETTLEMENT AGREEMENT**

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents, to the extent that written documents have been prepared, for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 18 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and/or its insurers in settlement of the claims of the Settlement Subclass Members (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder and/or its insurers will pay a total sum of \$3,437,500 to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members within 30 days following notice of entry of the Court's Order granting preliminary approval of this Settlement.

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the Settlement Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Settlement Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Settlement Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Settlement Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Settlement Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Settlement Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Settlement Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Settlement Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Settlement Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Settlement Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder relating to the Settlement Subclass Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Settlement Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the Settlement Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Settlement Subclass Homes, specifically excluding any claims for personal injury. The Settlement Subclass Members reserve any claims, rights, or remedies against: 1) any parties other than Builder, specifically including but not limited to the builders of their Settlement Subclass Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing. Additionally, the Settlement Subclass Members recognize that they may have some claim, demand, or cause of action against the Builder of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Settlement Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Settlement Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

10002  
Homeowner or Current Resident

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT**  
**NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: SEPTEMBER 9, 2009, at 9:00 a.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF KB HOME RESIDENCES CONTAINING KITEC PLUMBING SYSTEMS AND WHO CLOSED ESCROW ON THEIR KB HOME RESIDENCES BEFORE MAY 1, 2001 – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by KB HOME NEVADA INC. (“Builder”) that are believed to contain Kitec or PlumbBetter plumbing systems and are located within the following developments: Balboa Park, Black Mountain Vistas, Brentwood, Brookfield, Canyon Pointe, Canyon Ridge Estates, Canyon Springs, Cheyenne Ridge, Crestwood, Eastridge, Fallbrook, Highland Hills, Morning Ridge, Morning View, Paradise Hills, Rancho Ridge, Saratoga, Sentosa, Silverado, Silverado Pointe, Silverado Ridge, Silverado Springs, South Valley Ranch, South Valley Ranch III, Springfield, Sunrise Mountain, West Hills, and Woodland Hills, which closed escrow before May 1, 2001 (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder that will create a settlement fund for the benefit of the Settlement Subclass members to help pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB.** PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on SEPTEMBER 9, 2009, at 9:00 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	AUGUST 21, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	AUGUST 21, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	AUGUST 21, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund in the amount of \$5,747,796 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems or a portion of those replumbs. This Settlement resolves claims related to 2,383 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below) and any other funds recovered, or which will be recovered in the future for the replumbing of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass. Additionally, Class Counsel is continuing to pursue the plumber(s) responsible for the installation of the Kitec/PlumbBetter plumbing systems for additional funds to benefit the Settlement Subclass Homes.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$5,747,796 from Builder and/or its insurance carriers.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representatives are Murline Dowell, Christine Green, Earnest Schanzenbach, and Dale Jesse. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

**7. Why have the Subclass and Builder decided to settle?**

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and “good practice,” that Class claims have no basis in law or fact, that Builder has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located within the following developments: Balboa Park, Black Mountain Vistas, Brentwood, Brookfield, Canyon Pointe, Canyon Ridge Estates, Canyon Springs, Cheyenne Ridge, Crestwood, Eastridge, Fallbrook, Highland Hills, Morning Ridge, Morning View, Paradise Hills, Rancho Ridge, Saratoga, Sentosa, Silverado, Silverado Pointe, Silverado Ridge, Silverado Springs, South Valley Ranch, South Valley Ranch III, Springfield, Sunrise Mountain, West Hills, or Woodland Hills; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court’s final approval and provided with a Claim Form to request a replumb. The notice of the Court’s final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, and as soon as sufficient funds necessary to perform full replumbs of the Settlement Subclass Homes have been aggregated and collected, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, **you are only entitled to a replumb, you are not entitled to a monetary payment.** If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. **If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before AUGUST 21, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.**

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don’t want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. **If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.**

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The KB Home Nevada Inc. Subclass B Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before AUGUST 21, 2009, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

*Attention: Subclass Settlement Objections*

**IF YOU DO NOTHING**

**17. What happens if I do nothing?**

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

**THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT**

**18. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard

Kemp, Jones & Coulthard, LLP

Wells Fargo Tower, 17<sup>th</sup> Floor

3800 Howard Hughes Parkway

Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano

Lynch, Hopper & Salzano, LLP

231 South Third Street, #130

Las Vegas, NV 89101

**19. How will these attorneys be paid?**

Class Counsel negotiated with Builder to be paid 25% of this Settlement as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Iplex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on **SEPTEMBER 9, 2009, at 9:00 a.m.** At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents, to the extent that written documents have been prepared, for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You **may** obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 18 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and/or its insurers in settlement of the claims of the Settlement Subclass Members (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder and/or its insurers will pay a total sum of \$5,747,796 to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members within 90 days following notice of entry of the Court's Order granting preliminary approval of this Settlement.

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the Settlement Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Settlement Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Settlement Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Settlement Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Settlement Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Settlement Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Settlement Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Settlement Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Settlement Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Settlement Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder relating to the Settlement Subclass Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Settlement Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the Settlement Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Settlement Subclass Homes, specifically excluding any claims for personal injury. The Settlement Subclass Members reserve any claims, rights, or remedies against: 1) any parties other than Builder, specifically including but not limited to the builders of their Settlement Subclass Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing. Additionally, the Settlement Subclass Members recognize that they may have some claim, demand, or cause of action against the Builder of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Settlement Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Settlement Subclass Members.** This Settlement is **NOT CONTINGENT** upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Settlement Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

AV-3-2  
HOMEOWNER OR CURRENT RESIDENT

DISTRICT COURT  
CLARK COUNTY, NEVADA

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SUBCLASS SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

**Hearing Date & Time: December 15, 2009, at 10:30 a.m.**

*A court of law authorized this Notice. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF AVANTE HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Maya, LLC dba Avante Homes (“Builder”) that contain Kitec plumbing systems and are located within the Ashbrook, Aventura, Coral Hills, Durango Springs I & II, Emerald Ridge, Northbrook I, II & III, Sandstone, and The Springs Development(s) to notify the owners of these homes (“the Subclass”) that a settlement has been reached with Builder and Sharp Plumbing, Inc. (“Plumber”), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Subclass members to pay for the replumb of these homes (“the Subclass Settlement”). **PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.** The Court has preliminarily approved the Subclass Settlement and set a hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The Fairness Hearing will be held on December 15, 2009, at 10:30 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES	DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Subclass Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin the Subclass Settlement. After your Request to Join the Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Subclass Settlement, you must return the claim form that will be mailed to you after this Subclass Settlement receives final approval by the Court.
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Subclass Settlement. Class Counsel will provide all objections to all parties and the Court.
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Subclass Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass.

Your rights and options under this Subclass Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Subclass Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Subclass Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Subclass Settlement on behalf of the Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is forwarded to the landlord or owner of the home.) If you are a member of the Subclass, you have legal rights and choices to make before the Court decides whether to finally approve this Subclass Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumbBetter ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants IpeX Inc., and IpeX USA, LLC (collectively, "IpeX Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water, and the Builders and Plumbers deny those allegations. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

**3. What will this Subclass Settlement provide Subclass homeowners if approved by the Court?**

If approved by the Court, this Subclass Settlement will create a settlement fund in the amount of \$6,602,800 to be used for the benefit of the Subclass to pay for the replumb of homes with Kitec plumbing systems. This Subclass Settlement resolves the claims against Builder related to 1,310 homes constructed and sold by Builder in the following neighborhoods: Ashbrook, Aventura, Coral Hills, Durango Springs I & II, Emerald Ridge, Northbrook I, II & III, Sandstone, and The Springs ("the Subclass Homes") and it resolves the claims against Plumber as to 1,243 of the Subclass Homes ("the Plumber-Settled Homes"); this Subclass Settlement does not resolve any claims against Plumber regarding the 69 homes in Durango Springs I & II that closed escrow after April 3, 2003 when originally sold by Builder. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). This Subclass Settlement completely resolves all claims in this class action on behalf of the Subclass members against Builder. The combined settlement funds will then be used on behalf of the Subclass to fund the replumb of the Subclass homes with a Court-approved repair.

**4. Are additional funds anticipated from other parties?**

This Subclass Settlement only resolves the Subclass's claims against Plumber for some of the homes in the Subclass, leaving the potential for additional recovery against or settlement funds from Plumber. A separate settlement was reached between Class Counsel and Plumber and preliminarily approved by the Court that resolved additional Avante Subclass claims against Plumber. If you are the owner of an Avante Subclass home located within the Durango Springs I-II development and your home close escrow on or after April 4, 2003, but before September 1, 2003, when originally sold by Avante Homes, you should be receiving a separate notice contemporaneously with this notice. Additionally, Class Counsel previously reached, and the Court approved, a \$90,000,000.00 settlement with the Ipex Defendants (the "Ipex Settlement"). Though the Ipex Settlement was approved by the District Court, several defendants appealed that approval to the Nevada Supreme Court. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Subclass Settlement is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Subclass Settlement will remain in full force and effect for the benefit of the Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, the Ipex Defendants. Of course, the success of the Ipex Settlement appeal is not guaranteed, but Class Counsel intends to pursue it vigorously on behalf of the Class.

**5. How will this Subclass Settlement be funded?**

The specific funding for this Subclass Settlement is as follows: \$4,116,800 from Builder and/or its insurance carriers; and \$2,486,000 from Plumber and/or its insurance carriers ("The Subclass Settlement Funds").

**6. Why is this a class action, and what is a Subclass?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. A Subclass is a smaller subset of a larger Class. Your Subclass Representative is Paul Messingschlager.

**7. Why have the Subclass, Builder, and Plumber decided to settle?**

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Subclass Settlement?**

You are part of this Subclass Settlement if: a) You own a Subclass Home and b) You did not previously opt out of this class action. If you do not own a Subclass Home, you are not a part of this Subclass Settlement; if you own a Subclass Home but previously opted out of this class action, you may still take part in this Subclass Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Subclass Settlement is approved by the Court?**

If this Subclass Settlement is approved by the Court, you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Subclass Settlement.

**10. What happens if this Subclass Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Subclass Settlement will terminate and all the Subclass members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges related to the settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those the Subclass members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before December 1, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Subclass Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SUBCLASS SETTLEMENT**

**14. What if I don't want to be part of this Subclass Settlement?**

If you do not wish to receive the replumb or benefits provided in this Subclass Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Subclass Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

No. If you exclude yourself from this Subclass Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Subclass, then you can tell the Court that you do not like the Subclass Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Avante Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before December 1, 2009, with copies sent to Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169, Attention: Subclass Settlement Objections

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass. If this Subclass Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Subclass Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Subclass Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Subclass Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SUBCLASS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

**J. Randall Jones & William L. Coulthard**  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

**Francis Lynch, Charles Hopper, & Sergio Salzano**  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid 25% of the total Subclass Settlement Funds as their fee plus a litigation cost reimbursement as part of this Subclass Settlement ("Class Counsel's Fees and Costs"). As the full settlement amount is intended to contemplate sufficient funds for fees, costs, and repairs, this fee will not reduce the amount ultimately dedicated to fund the replumb of the Subclass Homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipx Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on December 15, 2009, at 10:30 a.m. at the Regional Justice Center, Courtroom 12D (12<sup>th</sup> Floor/Department 16), 200 Lewis Avenue, Las Vegas, Nevada 89101. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by timely sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Subclass Settlement?

This Notice summarizes the settlement below. More details may be found in the Motion for Approval filed by Class Counsel or the transcript of the hearing in which the settlement was put on the Court's record. You can review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the Subclass Settlement Funds (the "Qualified Settlement Fund").

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's Fees and Costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining settlement sums will then be combined with any other money recovered for the Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber will be entitled to a full and complete release for the settled homes, regardless of whether Replacement Plumbing is accepted.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Plaintiff, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder and Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Subclass Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder relating to the Subclass Homes will be dismissed with prejudice and all of the claims against Plumber relating to the Plumber-Settled Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Subclass Homes and against Plumber arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Plumber-Settled Homes, specifically excluding any claims for personal injury. The Subclass reserves: 1) any non-Kitec or non-PlumbBetter claim regarding the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 2) any Class claim not specifically related to the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 3) any claim(s) arising out of or related to any plumbing system or component thereof installed by Builder, Plumber and/or its subcontractor, agent, representative, or employee to replace the Kitec plumbing system in any home constructed by Builder; and 4) any personal injury claim. Additionally, the Subclass members recognize that they may have some claim, demand, or cause of action against the Builder or Plumber of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder or Plumber. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipx Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipx Settlement – and the related funding of the Ipx Settlement – this Settlement will remain in full force and effect. Therefore, the Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipx Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

C-10001

|||||  
HOMEOWNER OR CURRENT RESIDENT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

**Hearing Date & Time: DECEMBER 15, 2009, at 10:30 a.m.**

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF KB HOME SUBCLASS A RESIDENCES THAT (1) CONTAIN KITEC PLUMBING SYSTEMS AND (2) THAT CLOSED ESCROW FROM FEBRUARY 1, 2004 TO FEBRUARY 1, 2006 WHEN ORIGINALLY SOLD BY KB HOME – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by KB HOME NEVADA INC. (“Builder”) that are believed to contain Kitec or PlumbBetter plumbing systems that closed escrow from February 1, 2004 to February 1, 2006 when originally sold by Builder and are located within the following developments: Chaco Canyon, Desert Willows, Desert Willows Units 4 & 5, Eldorado at Warm Springs, Eldorado Pines, Eldorado Trails, Goldrush, Hualapai Ridge, Liberty at Mayfield, Liberty at Paradise, Liberty at The Orchards, Liberty at Tierra Linda, Liberty at Warm Springs, Shadow Springs, Silverado Pines, Sunset Pines, Sunset Pines North, Terracina (TL-Sonora, TL3N 2 Car Villas, TL3S 1 Car Villas, and TLII 2-3 Pueblo) Tierra Linda, Villas at Tropicana, and Villas at Windmill (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder and Sharp Plumbing, Inc. (“Plumber”) that will create a settlement fund for the benefit of the Settlement Subclass members to help pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on DECEMBER 15, 2009, at 10:30 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	DECEMBER 1, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	DECEMBER 1, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	DECEMBER 1, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec plumbing systems and/or components ("Kitec") manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

**3. What will this Settlement provide Subclass homeowners if approved by the Court?**

If approved by the Court, this Settlement will create a settlement fund in the amount of \$12,031,524.00 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems or a portion of those replumbs. This Settlement resolves claims related to 3,049 homes constructed and sold by Builder, of which approximately 2,727 are believed to contain Kitec. The funds paid by or on behalf of the Builder and/or Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below) and any other funds recovered, or which will be recovered in the future for the replumbing of the Settlement Subclass homes with a Court-approved repair.

**4. Are additional funds anticipated from other parties?**

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

**5. How will this Settlement be funded?**

The specific funding for this Settlement is as follows: \$12,031,524.00 from Builder and/or its insurance carriers.

**6. Why is this a class action, and what is a Subclass?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. A Subclass is a smaller subset of a larger Class. Your Subclass Representatives are Frank D'Ambrosio and Rich Procissi.

**7. Why have the Subclass and Builder decided to settle?**

The Court has not decided in favor of the Subclass or Builder. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder and Plumber contend that their homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder and plumbed by Plumber that contains, or at any time contained, a Kitec plumbing system that closed escrow from February 1, 2004 to February 1, 2006 when originally sold by Builder and is located within the following developments: Chaco Canyon, Desert Willows, Desert Willows Units 4 & 5, Eldorado at Warm Springs, Eldorado Pines, Eldorado Trails, Goldrush, Hualapai Ridge, Liberty at Mayfield, Liberty at Paradise, Liberty at The Orchards, Liberty at Tierra Linda, Liberty at Warm Springs, Shadow Springs, Silverado Pines, Sunset Pines, Sunset Pines North, Terracina (TL-Sonora, TL3N 2 Car Villas, TL3S 1 Car Villas, and TLII 2-3 Pueblo) Tierra Linda, Villas at Tropicana, and Villas at Windmill; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, and as soon as sufficient funds necessary to perform full replumbs of the Settlement Subclass Homes have been aggregated and collected, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, **you are only entitled to a replumb, you are not entitled to a monetary payment.** If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. **If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before DECEMBER 1, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.**

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I don't want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. **If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder or Plumber on these claims later.**

**15. If I exclude myself, may I pursue a claim against Builder independently?**

No. If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or Plumber concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The KB Home Subclass A Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before DECEMBER 1, 2009, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Subclass Settlement Objections*

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up **your right to sue** Builder and/or Plumber on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or Plumber.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

**J. Randall Jones & William L. Coulthard**  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

**Francis Lynch, Charles Hopper, & Sergio Salzano**  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder to be paid 25% of this Settlement as their fee and cost reimbursement as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Iplex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on **DECEMBER 15, 2009**, at 10:30 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

### SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents, to the extent that written documents have been prepared, for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 18 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and/or its insurers in settlement of the claims of the Settlement Subclass Members (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder and/or its insurers will pay a total sum of **\$12,031,524.00** to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members within 45 days following notice of entry of the Court's Order granting preliminary approval of this Settlement.

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the Settlement Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Settlement Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Settlement Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Settlement Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Settlement Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Settlement Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Settlement Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Settlement Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Settlement Subclass Home following the Final Fairness Hearing.

**3. Dismissal of Claims Against Builder and Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder and Plumber relating to the Settlement Subclass Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Settlement Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder and Plumber from any and all conceivable losses, damages or injuries arising from or in any way related to the Settlement Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder or Plumber arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Settlement Subclass Homes, specifically excluding any claims for personal injury. The Settlement Subclass Members reserve any claims, rights, or remedies against: 1) any non-Kitec or non-PlumbBetter claim regarding the Subclass Homes (as to Builder and Plumber); 2) any Class claim not specifically related to the Subclass Homes (as to Builder and Plumber); 3) any parties other than Builder or Plumber, specifically including but not limited to the builders of their Settlement Subclass Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder; 4) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing; and 5) any personal injury claim. Additionally, the Settlement Subclass Members recognize that they may have some claim, demand, or cause of action against the Builder or Plumber of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder or Plumber. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Settlement Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Iplex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Iplex Settlement – and the related funding of the Iplex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Iplex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Settlement Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

E-40004  
\*\*\*\*\*  
HOMEOWNER OR CURRENT RESIDENT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302  
Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SUBCLASS SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: December 15, 2009, at 10:30 a.m.

**TO: ALL OWNERS OF RECORD OF LBM HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.**

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by LBM Development Co., Inc. (“Builder”) that contain Kitec plumbing systems and are located within the Copperhead Hills II, Copperhead Ranch, and Copperhead Trails Development(s) to notify the owners of these homes (“the Subclass”) that a settlement has been reached with Builder and Sharp Plumbing, Inc. (“Plumber”), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Subclass members to pay for the replumb of these homes (“the Subclass Settlement”). **PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.** The Court has preliminarily approved the Subclass Settlement and set a hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The Fairness Hearing will be held on December 15, 2009, at 10:30 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom I2D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Subclass Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin the Subclass Settlement. After your Request to Join the Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	DECEMBER 1, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Subclass Settlement, you must return the claim form that will be mailed to you after this Subclass Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Subclass Settlement. Class Counsel will provide all objections to all parties and the Court.	DECEMBER 1, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Subclass Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	DECEMBER 1, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass.	N/A

Your rights and options under this Subclass Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Subclass Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this notice is sent to you to inform you about legal rights you may have with respect to this Subclass Settlement.

#### BASIC INFORMATION

##### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Subclass Settlement on behalf of the Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is forwarded to the landlord or owner of the home.) If you are a member of the Subclass, you have legal rights and choices to make before the Court decides whether to finally approve this Subclass Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

##### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumbBetter ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water, and the Builders and Plumbers deny those allegations. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

##### 3. What will this Subclass Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Subclass Settlement will create a settlement fund in the amount of \$1,676,400 to be used for the benefit of the Subclass to pay for the replumb of homes with Kitec plumbing systems. This Subclass Settlement resolves the claims against Builder related to 435 homes constructed and sold by Builder in the following neighborhoods: Copperhead Hills II, Copperhead Ranch, and Copperhead Trails ("the Subclass Homes") and it resolves the claims against Plumber as to 164 of the Subclass Homes ("the Plumber-Settled Homes"); this Subclass Settlement does not resolve any claims against Plumber regarding Builder's homes located in the Copperhead Trails development. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). This Subclass Settlement completely resolves all claims in this class action on behalf of the

Subclass members against Builder. The combined settlement funds will then be used on behalf of the Subclass to fund the replumb of the Subclass homes with a Court-approved repair.

**4. Are additional funds anticipated from other parties?**

This Subclass Settlement only resolves the Subclass's claims against Plumber for some of the homes in the Subclass, leaving the potential for additional recovery against or settlement funds from Plumber. Additionally, Class Counsel previously reached, and the Court approved, a \$90,000,000.00 settlement with the Ipex Defendants (the "Ipex Settlement"). Though the Ipex Settlement was approved by the District Court, several defendants appealed that approval to the Nevada Supreme Court. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Subclass Settlement is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Subclass Settlement will remain in full force and effect for the benefit of the Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, the Ipex Defendants. Of course, the success of neither the additional claims against Plumber nor the Ipex Settlement appeal is guaranteed, but Class Counsel intends to pursue both vigorously on behalf of the Class.

**5. How will this Subclass Settlement be funded?**

The specific funding for this Subclass Settlement is as follows: \$1,348,400 from Builder and/or its insurance carriers; and \$328,000 from Plumber and/or its insurance carriers ("The Subclass Settlement Funds").

**6. Why is this a class action, and what is a Subclass?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. A Subclass is a smaller subset of a larger Class. Your Subclass Representative is Kimberly Gladden.

**7. Why have the Subclass, Builder, and Plumber decided to settle?**

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Subclass Settlement?**

You are part of this Subclass Settlement if: a) You own a Subclass Home and b) You did not previously opt out of this class action. If you do not own a Subclass Home, you are not a part of this Subclass Settlement; if you own a Subclass Home but previously opted out of this class action, you may still take part in this Subclass Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Subclass Settlement is approved by the Court?**

If this Subclass Settlement is approved by the Court, you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Subclass Settlement.

**10. What happens if this Subclass Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Subclass Settlement will terminate and all the Subclass members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges related to the settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those the Subclass members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

## **YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

### **13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before December 1, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Subclass Settlement.

## **YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SUBCLASS SETTLEMENT**

### **14. What if I don't want to be part of this Subclass Settlement?**

If you do not wish to receive the replumb or benefits provided in this Subclass Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Subclass Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

### **15. If I exclude myself, may I pursue a claim against Builder independently?**

No. If you exclude yourself from this Subclass Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

## **YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

### **16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Subclass, then you can tell the Court that you do not like the Subclass Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The LBM Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before December 1, 2009, with copies sent to Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169, Attention: Subclass Settlement Objections**

## **IF YOU DO NOTHING**

### **17. What happens if I do nothing?**

If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass. If this Subclass Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Subclass Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Subclass Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Subclass Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SUBCLASS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard

Kemp, Jones & Coulthard, LLP

Wells Fargo Tower, 17<sup>th</sup> Floor

3800 Howard Hughes Parkway

Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano

Lynch, Hopper & Salzano, LLP

231 South Third Street, #130

Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid 25% of the total Subclass Settlement Funds as their fee plus a litigation cost reimbursement as part of this Subclass Settlement ("Class Counsel's Fees and Costs"). As the full settlement amount is intended to contemplate sufficient funds for fees, costs, and repairs, this fee will not reduce the amount ultimately dedicated to fund the replumb of the Subclass Homes. This fee does not include any fees previously awarded to Class Counsel by way of the lpex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on December 15, 2009, at 10:30 a.m. at the Regional Justice Center, Courtroom 12D (12<sup>th</sup> Floor/Department 16), 200 Lewis Avenue, Las Vegas, Nevada 89101. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by timely sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Subclass Settlement?

This Notice summarizes the settlement below. More details may be found in the Motion for Approval filed by Class Counsel or the transcript of the hearing in which the settlement was put on the Court's record. You can review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.

1. Creation of Qualified Settlement Fund. A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the Subclass Settlement Funds (the "Qualified Settlement Fund").

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's Fees and Costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining settlement sums will then be combined with any other money recovered for the Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber will be entitled to a full and complete release for the settled homes, regardless of whether Replacement Plumbing is accepted.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Plaintiff, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder and Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Subclass Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder relating to the Subclass Homes will be dismissed with prejudice and all of the claims against Plumber relating to the Plumber-Settled Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Subclass Homes and against Plumber arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Plumber-Settled Homes, specifically excluding any claims for personal injury. The Subclass reserves: 1) any non-Kitec or non-PlumbBetter claim regarding the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 2) any Class claim not specifically related to the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 3) any claim(s) arising out of or related to any plumbing system or component thereof installed by Builder, Plumber and/or its subcontractor, agent, representative, or employee to replace the Kitec plumbing system in any home constructed by Builder; and 4) any personal injury claim. Additionally, the Subclass members recognize that they may have some claim, demand, or cause of action against the Builder of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipxex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipxex Settlement – and the related funding of the Ipxex Settlement – this Settlement will remain in full force and effect. Therefore, the Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipxex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

N1628

|||||  
HOMEOWNER OR CURRENT RESIDENT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SUBCLASS SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: December 15, 2009, at 10:30 a.m.

*A court of law authorized this Notice. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF NIGRO HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Nigro Associates ffn Edward Nigro aka Nigro & Associates and Nigro Construction, Inc. (“Builder”) that contain Kitec plumbing systems and are located within the Desert Bloom, Desert Sage, Marbella Ridge, San Marino, and Stags Leap Development(s) to notify the owners of these homes (“the Subclass”) that a settlement has been reached with Builder and Sharp Plumbing, Inc. (“Plumber”), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Subclass members to pay for the replumb of these homes (“the Subclass Settlement”). **PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.** The Court has preliminarily approved the Subclass Settlement and set a hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The Fairness Hearing will be held on December 15, 2009, at 10:30 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Subclass Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin the Subclass Settlement. After your Request to Join the Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	DECEMBER 1, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Subclass Settlement, you must return the claim form that will be mailed to you after this Subclass Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Subclass Settlement. Class Counsel will provide all objections to all parties and the Court.	DECEMBER 1, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Subclass Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	DECEMBER 1, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass.	N/A

Your rights and options under this Subclass Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Subclass Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Subclass Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Subclass Settlement on behalf of the Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is forwarded to the landlord or owner of the home.) If you are a member of the Subclass, you have legal rights and choices to make before the Court decides whether to finally approve this Subclass Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumbBetter ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water, and the Builders and Plumbers deny those allegations. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. **This Class Action does not seek any damages for personal injury.**

**3. What will this Subclass Settlement provide Subclass homeowners if approved by the Court?**

If approved by the Court, this Subclass Settlement will create a settlement fund in the amount of \$2,260,800 to be used for the benefit of the Subclass to pay for the replumb of homes with Kitec plumbing systems. This Subclass Settlement resolves the claims against Builder related to 403 homes constructed and sold by Builder in the following neighborhoods: Desert Bloom, Desert Sage, Marbella Ridge, San Marino, and Stags Leap ("the Subclass Homes") and it resolves the claims against Plumber as to 398 of the Subclass Homes ("the Plumber-Settled Homes"); this Subclass Settlement does not resolve any claims against Plumber regarding the 5 homes in Desert Sage. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). This Subclass Settlement completely resolves all claims in this class action on behalf of the Subclass members against Builder. The combined settlement funds will then be used on behalf of the Subclass to fund the replumb of the Subclass homes with a Court-approved repair.

**4. Are additional funds anticipated from other parties?**

This Subclass Settlement only resolves the Subclass's claims against Plumber for some of the homes in the Subclass, leaving the potential for additional recovery against or settlement funds from Plumber. A separate settlement was reached between Class Counsel and Plumber and preliminarily approved by the Court that resolved all remaining Nigro Subclass claims against Plumber. If you are the owner of a Nigro Subclass home located within the Desert Sage development, you should be receiving a separate notice contemporaneously with this notice. Additionally, Class Counsel previously reached, and the Court approved, a \$90,000,000.00 settlement with the Ipex Defendants (the "Ipex Settlement"). Though the Ipex Settlement was approved by the District Court, several defendants appealed that approval to the Nevada Supreme Court. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Subclass Settlement is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Subclass Settlement will remain in full force and effect for the benefit of the Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, the Ipex Defendants. Of course, the success of the Ipex Settlement appeal is not guaranteed, but Class Counsel intends to pursue it vigorously on behalf of the Class.

**5. How will this Subclass Settlement be funded?**

The specific funding for this Subclass Settlement is as follows: \$1,450,800 from Builder and/or its insurance carriers; and \$810,000 from Plumber and/or its insurance carriers. ("the Subclass Settlement Funds").

**6. Why is this a class action, and what is a Subclass?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. A Subclass is a smaller subset of a larger Class. Your Subclass Representative is Laura Ishum.

**7. Why have the Subclass, Builder, and Plumber decided to settle?**

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Subclass Settlement?**

You are part of this Subclass Settlement if: a) You own a Subclass Home and b) You did not previously opt out of this class action. If you do not own a Subclass Home, you are not a part of this Subclass Settlement; if you own a Subclass Home but previously opted out of this class action, you may still take part in this Subclass Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Subclass Settlement is approved by the Court?**

If this Subclass Settlement is approved by the Court, you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Subclass Settlement.

**10. What happens if this Subclass Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Subclass Settlement will terminate and all the Subclass members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges related to the settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those Subclass members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before December 1, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Subclass Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SUBCLASS SETTLEMENT**

**14. What if I don't want to be part of this Subclass Settlement?**

If you do not wish to receive the replumb or benefits provided in this Subclass Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Subclass Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

**15. If I exclude myself, may I pursue a claim against Builder independently?**

No. If you exclude yourself from this Subclass Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Subclass, then you can tell the Court that you do not like the Subclass Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Nigro Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before December 1, 2009, with copies sent to Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169, Attention: Subclass Settlement Objections

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass. If this Subclass Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Subclass Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Subclass Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Subclass Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SUBCLASS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

**J. Randall Jones & William L. Coulthard**  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

**Francis Lynch, Charles Hopper, & Sergio Salzano**  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid 25% of the total Subclass Settlement Funds as their fee plus a litigation cost reimbursement as part of this Subclass Settlement ("Class Counsel's Fees and Costs"). As the full settlement amount is intended to contemplate sufficient funds for fees, costs, and repairs, this fee will not reduce the amount ultimately dedicated to fund the replumb of the Subclass Homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipx Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on December 15, 2009, at 10:30 a.m. at the Regional Justice Center, Courtroom 12D (12<sup>th</sup> Floor/Department 16), 200 Lewis Avenue, Las Vegas, Nevada 89101. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by timely sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Subclass Settlement?

This Notice summarizes the settlement below. More details may be found in the Motion for Approval filed by Class Counsel or the transcript of the hearing in which the settlement was put on the Court's record. You can review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

### SUMMARY OF SETTLEMENT AGREEMENT

The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the Subclass Settlement Funds (the "Qualified Settlement Fund").

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's Fees and Costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining settlement sums will then be combined with any other money recovered for the Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber will be entitled to a full and complete release for the settled homes, regardless of whether Replacement Plumbing is accepted.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Plaintiff, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder and Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Subclass Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder relating to the Subclass Homes will be dismissed with prejudice and all of the claims against Plumber relating to the Plumber-Settled Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Subclass Homes and against Plumber arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Plumber-Settled Homes, specifically excluding any claims for personal injury. The Subclass reserves: 1) any non-Kitec or non-PlumbBetter claim regarding the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 2) any Class claim not specifically related to the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 3) any claim(s) arising out of or related to any plumbing system or component thereof installed by Builder, Plumber and/or its subcontractor, agent, representative, or employee to replace the Kitec plumbing system in any home constructed by Builder; and 4) any personal injury claim. Additionally, the Subclass members recognize that they may have some claim, demand, or cause of action against the Builder of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

J-10082

|||||  
HOMEOWNER OR CURRENT RESIDENT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SUBCLASS SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

**Hearing Date & Time: December 15, 2009, at 10:30 a.m.**

*A court of law authorized this Notice. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF PAGEANTRY HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Pageantry Communities, Inc. (“Builder”) that contain Kitec plumbing systems and are located within the Montesol at La Entrada Units 1 & 2 Development to notify the owners of these homes (“the Subclass”) that a settlement has been reached with Builder and Pioneer Plumbing, Inc. (“Plumber”), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Subclass members to pay for the replumb of these homes (“the Subclass Settlement”). **PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.** The Court has preliminarily approved the Subclass Settlement and set a hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The Fairness Hearing will be held on December 15, 2009, at 10:30 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		Due DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Subclass Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin the Subclass Settlement. After your Request to Join the Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	DECEMBER 1, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Subclass Settlement, you must return the claim form that will be mailed to you after this Subclass Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Subclass Settlement. Class Counsel will provide all objections to all parties and the Court.	DECEMBER 1, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Subclass Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	DECEMBER 1, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass.	N/A

Your rights and options under this Subclass Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Subclass Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Subclass Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Subclass Settlement on behalf of the Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is forwarded to the landlord or owner of the home.) If you are a member of the Subclass, you have legal rights and choices to make before the Court decides whether to finally approve this Subclass Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumbBetter ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Iplex Inc., and Iplex USA, LLC (collectively, "Iplex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water, and the Builders and Plumbers deny those allegations. This Class Action seeks money damages together with attorneys fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Subclass Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Subclass Settlement will create a settlement fund in the amount of \$418,200 to be used for the benefit of the Subclass to pay for the replumb of homes with Kitec plumbing systems. This Subclass Settlement resolves the claims against Builder related to 82 homes constructed and sold by Builder in the following neighborhood: Montesol at La Entrada Units 1 & 2 ("the Subclass Homes") and it resolves the claims against Plumber as to 82 of the Subclass Homes ("the Plumber-Settled Homes"). The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder's negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). This Subclass Settlement completely resolves all claims in this class action on behalf of the Subclass members against Builder and Plumber. The combined settlement funds will then be used on behalf of the Subclass to fund the replumb of the Subclass homes with a Court-approved repair.

**4. Are additional funds anticipated from other parties?**

Class Counsel previously reached, and the Court approved, a \$90,000,000.00 settlement with the Ipex Defendants (the “Ipex Settlement”). Though the Ipex Settlement was approved by the District Court, several defendants appealed that approval to the Nevada Supreme Court. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Subclass Settlement is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Subclass Settlement will remain in full force and effect for the benefit of the Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, the Ipex Defendants. Of course, the success of the Ipex Settlement appeal is not guaranteed, but Class Counsel intends to pursue it vigorously on behalf of the Class.

**5. How will this Subclass Settlement be funded?**

The specific funding for this Subclass Settlement is as follows: \$270,600 from Builder and/or its insurance carriers; and \$147,600 from Plumber and/or its insurance carriers (“The Subclass Settlement Funds”).

**6. Why is this a class action, and what is a Subclass?**

In a class action lawsuit, one or more people called “Representative Plaintiffs” sue on behalf of other people who have similar claims. All of these people together are known as the “Class” or “Class Members.” One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. A Subclass is a smaller subset of a larger Class. Your Subclass Representatives are Joanne & Walter Sandbrook.

**7. Why have the Subclass, Builder, and Plumber decided to settle?**

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and “good practice,” that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Subclass Settlement?**

You are part of this Subclass Settlement if: a) You own a Subclass Home and b) You did not previously opt out of this class action. If you do not own a Subclass Home, you are not a part of this Subclass Settlement; if you own a Subclass Home but previously opted out of this class action, you may still take part in this Subclass Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Subclass Settlement is approved by the Court?**

If this Subclass Settlement is approved by the Court, you will be notified of the Court’s final approval and provided with a Claim Form to request a replumb. The notice of the Court’s final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Subclass Settlement.

**10. What happens if this Subclass Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Subclass Settlement will terminate and all the Subclass members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges related to the settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those the Subclass members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, **you are only entitled to a replumb, you are not entitled to a monetary payment.** If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

## **YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**  
Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. **If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before December 1, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Subclass Settlement.**

## **YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SUBCLASS SETTLEMENT**

**14. What if I don't want to be part of this Subclass Settlement?**

If you do not wish to receive the replumb or benefits provided in this Subclass Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Subclass Settlement. **If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.**

**15. If I exclude myself, may I pursue a claim against Builder independently?**

No. If you exclude yourself from this Subclass Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

## **YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Subclass, then you can tell the Court that you do not like the Subclass Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, may approve the Settlement despite objections, and all members of the Subclass will be bound by the Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Pageantry Subclass Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before December 1, 2009, with copies sent to Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169, Attention: Subclass Settlement Objections**

## **IF YOU DO NOTHING**

**17. What happens if I do nothing?**

If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass. If this Subclass Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Subclass Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Subclass Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Subclass Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## **THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SUBCLASS SETTLEMENT**

**18. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. **You will not be individually charged for these lawyers.** The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

**19. How will these attorneys be paid?**

Class Counsel negotiated with Builder and Plumber to be paid 25% of the total Subclass Settlement Funds as their fee plus a litigation cost reimbursement as part of this Subclass Settlement ("Class Counsel's Fees and Costs"). As the full settlement amount is intended to contemplate sufficient funds for fees, costs, and repairs, this fee will not reduce the amount ultimately dedicated to fund the replumb of the Subclass Homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

**The Court's Fairness Hearing**

**20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on December 15, 2009, at 10:30 a.m. at the Regional Justice Center, Courtroom 12D (12<sup>th</sup> Floor/Department 16), 200 Lewis Avenue, Las Vegas, Nevada 89101. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

**21. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

**22. May I speak at the hearing?**

You will be allowed to speak at the hearing by timely sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

**Getting More Information**

**23. Where can I receive more information about this Subclass Settlement?**

This Notice summarizes the settlement below. More details may be found in the Motion for Approval filed by Class Counsel or the transcript of the hearing in which the settlement was put on the Court's record. You can review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

**SUMMARY OF SETTLEMENT AGREEMENT**

The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the Subclass Settlement Funds (the "Qualified Settlement Fund").

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's Fees and Costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining settlement sums will then be combined with any other money recovered for the Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber will be entitled to a full and complete release for the settled homes, regardless of whether Replacement Plumbing is accepted.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Plaintiff, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder and Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumber of the Subclass Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder relating to the Subclass Homes will be dismissed with prejudice and all of the claims against Plumber relating to the Plumber-Settled Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Subclass Homes and against Plumber arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Plumber-Settled Homes, specifically excluding any claims for personal injury. The Subclass reserves: 1) any non-Kitec or non-PlumbBetter claim regarding the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 2) any Class claim not specifically related to the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 3) any claim(s) arising out of or related to any plumbing system or component thereof installed by Builder, Plumber and/or its subcontractor, agent, representative, or employee to replace the Kitec plumbing system in any home constructed by Builder; and 4) any personal injury claim. Additionally, the Subclass members recognize that they may have some claim, demand, or cause of action against the Builder of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Subclass Members.** This Settlement is **NOT CONTINGENT** upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

F-10001

|||||  
HOMEOWNER OR CURRENT RESIDENT

DISTRICT COURT  
CLARK COUNTY, NEVADA

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SUBCLASS SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

**Hearing Date & Time: December 15, 2009, at 10:30 a.m.**

*A court of law authorized this Notice. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF VIPOR SUBCLASS A HOMES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Vipor Homes Unlimited, Inc. ("Builder") that contain Kitec plumbing systems and are located within the Eldorado Springs Development(s) to notify the owners of these homes ("the Subclass") that a settlement has been reached with Builder and D.R. Bowles Plumbing, LLC ("Plumber"), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Subclass members to pay for the replumb of these homes ("the Subclass Settlement"). **PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.** The Court has preliminarily approved the Subclass Settlement and set a hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The Fairness Hearing will be held on **December 15, 2009, at 10:30 a.m.**, in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUEDATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Subclass Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin the Subclass Settlement. After your Request to Join the Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	DECEMBER 1, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Subclass Settlement, you must return the claim form that will be mailed to you after this Subclass Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Subclass Settlement. Class Counsel will provide all objections to all parties and the Court.	DECEMBER 1, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Subclass Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	DECEMBER 1, 2009
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass.	N/A

Your rights and options under this Subclass Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Subclass Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Subclass Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Subclass Settlement on behalf of the Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Subclass. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is forwarded to the landlord or owner of the home.) If you are a member of the Subclass, you have legal rights and choices to make before the Court decides whether to finally approve this Subclass Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumbBetter ("Kitec") plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water, and the Builders and Plumbers deny those allegations. This Class Action seeks money damages together with attorneys fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Subclass Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Subclass Settlement will create a settlement fund in the amount of \$116,000 to be used for the benefit of the Subclass to pay for the replumb of homes with Kitec plumbing systems. This Subclass Settlement resolves the claims against Plumber related to 58 homes constructed and sold by Builder in the following neighborhood: Eldorado Springs ("the Subclass Homes"). The funds paid by or on behalf of Plumber will be combined with the negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). This Subclass Settlement completely resolves all claims in this class action on behalf of the Subclass members against Plumber. The combined settlement funds will then be used on behalf of the Subclass to fund the replumb of the Subclass homes with a Court-approved repair.

**4. Are additional funds anticipated from other parties?**

In exchange for Subclass's agreement not to execute against Builder, personally, Builder has agreed that a judgment shall be entered against Builder in favor of the Subclass in this class action in the total amount of \$688,750. The Subclass cannot recover against the Builder, personally, however, Builder has also assigned to the Subclass Builder's claims against its insurance provider. Class Counsel, on behalf of the Subclass, is pursuing Builder's insurance provider to recover the additional funds needed to replumb the Subclass Homes. This Subclass Settlement completely resolves all claims in this class action on behalf of the Subclass members against Builder personally. Additionally, Class Counsel previously reached, and the Court approved, a \$90,000,000.00 settlement with the Ipex Defendants (the "Ipex Settlement"). Though the Ipex Settlement was approved by the District Court, several defendants appealed that approval to the Nevada Supreme Court. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Subclass Settlement is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Subclass Settlement will remain in full force and effect for the benefit of the Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, the Ipex Defendants. Of course, the success of neither the claims against Builder's insurance provider nor the Ipex Settlement appeal is guaranteed, but Class Counsel intends to pursue both vigorously on behalf of the Class.

**5. How will this Subclass Settlement be funded?**

The specific funding for this Subclass Settlement is as follows: \$116,000 from Plumber and/or its insurance carriers ("The Subclass Settlement Funds").

**6. Why is this a class action, and what is a Subclass?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. A Subclass is a smaller subset of a larger Class. Your Subclass Representative is Steven Gallo.

**7. Why have the Subclass, Builder, and Plumber decided to settle?**

The Court has not decided in favor of the Subclass or Plumber. Plumber vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Plumber contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Plumber has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Subclass Settlement?**

You are part of this Subclass Settlement if: a) You own a Subclass Home and b) You did not previously opt out of this class action. If you do not own a Subclass Home, you are not a part of this Subclass Settlement; if you own a Subclass Home but previously opted out of this class action, you may still take part in this Subclass Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Subclass Settlement is approved by the Court?**

If this Subclass Settlement is approved by the Court, and if Class Counsel is successful in pursuing Builder's insurance carrier, you will be notified of the Court's final approval. The notice of the Court's final approval will explain how to obtain the benefits provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Subclass Settlement.

**10. What happens if this Subclass Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Subclass Settlement will terminate and all the Subclass members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges related to the settlement are resolved, if any, and if Class Counsel is successful in pursuing Builder's insurance carrier, the Claims Administrator will begin to schedule replumbs for those the Subclass members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**I2. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before December 1, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Subclass Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SUBCLASS SETTLEMENT**

**14. What if I don't want to be part of this Subclass Settlement?**

If you do not wish to receive the replumb or benefits provided in this Subclass Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Subclass Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder and Plumber on these claims later.

**15. If I exclude myself, may I pursue a claim against Plumber or Builder independently?**

No. If you exclude yourself from this Subclass Settlement, you will not be entitled to pursue an independent claim against Builder or Plumber concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Subclass, then you can tell the Court that you do not like the Subclass Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Vipor Subclass A Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before December 1, 2009, with copies sent to Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169, Attention: Subclass Settlement Objections

**IF YOU DO NOTHING**

**17. What happens if I do nothing?**

If you do nothing, you will be bound by this Subclass Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass. If this Subclass Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Subclass Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Subclass Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Subclass Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SUBCLASS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid 25% of the total Subclass Settlement Funds as their fee plus a litigation cost reimbursement as part of this Subclass Settlement ("Class Counsel's Fees and Costs"). As the full settlement amount is intended to contemplate sufficient funds for fees, costs, and repairs, this fee will not reduce the amount ultimately dedicated to fund the replumb of the Subclass Homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on December 15, 2009, at 10:30 a.m. at the Regional Justice Center, Courtroom 12D (12<sup>th</sup> Floor/Department 16), 200 Lewis Avenue, Las Vegas, Nevada 89101. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by timely sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Subclass Settlement?

This Notice summarizes the settlement below. More details may be found in the Motion for Approval filed by Class Counsel or the transcript of the hearing in which the settlement was put on the Court's record. You can review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.

1. Creation of Qualified Settlement Fund. A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the Subclass Settlement Funds (the "Qualified Settlement Fund").

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's Fees and Costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining settlement sums will then be combined with any other money recovered for the Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber will be entitled to a full and complete release for the settled homes, regardless of whether Replacement Plumbing is accepted.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Plaintiff, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Subclass Home following the Final Fairness Hearing.

**3. Dismissal of Claims Against Builder and Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Plumber of the Subclass Settlement Funds to the Qualified Settlement Fund and execution of the Stipulated Judgment and the Assignment of Claims by the Builder, and assuming that there have been no timely appeals of the Final Order, all of the claims against Plumber relating to the Subclass Homes will be dismissed with prejudice and all of the claims against Builder, personally, relating to the Subclass Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Plumber from any and all conceivable losses, damages or injuries arising from or in any way related to the Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Plumber arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Subclass Homes and against Builder, personally, arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Subclass Homes, specifically excluding any claims for personal injury. The Subclass reserves: 1) any non-Kitec or non-PlumbBetter claim regarding the Subclass Homes (as to Builder and Plumber); 2) any Class claim not specifically related to the Subclass Homes (as to Builder and Plumber); 3) any parties other than Builder or Plumber, specifically including but not limited to the builders of the Subclass Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder; 4) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing; and 5) any personal injury claim. Additionally, the Subclass members recognize that they may have some claim, demand, or cause of action against the Builder and Plumber of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder and Plumber. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Iplex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Iplex Settlement – and the related funding of the Iplex Settlement – this Settlement will remain in full force and effect. Therefore, the Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Iplex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Subclass Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

SF-331

|||||  
HOMEOWNER OR CURRENT RESIDENT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: DECEMBER 15, 2009, at 10:30 a.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** OWNERS OF RECORD OF AVANTE, CHAMPION, KB SUBCLASS B, NIGRO, SANTA FE, AND WOODSIDE SUBCLASS B HOMES CONTAINING KITEC PLUMBING SYSTEMS INSTALLED BY SHARP PLUMBING AS DEFINED BELOW – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by (1) Maya, LLC dba Avante Homes in the Durango Springs I-II developments; (2) Champion Homes Nevada, Inc. in the East Ranch and Hunters Ridge developments; (3) KB Home Nevada Inc. (“KB”) that closed escrow on or before May 1, 2001, when originally sold by KB in the Balboa Park, Black Mountain Vistas, Brentwood, Brookfield, Canyon Pointe, Canyon Ridge Estates, Canyon Springs, Cheyenne Ridge, Crestwood, Eastridge, Fallbrook, Highland Hills, Morning View, Paradise Hills, Rancho Ridge, Saratoga, Sentosa, Silverado, Silverado Pointe, Silverado Ridge, Silverado Springs, South Valley Ranch, South Valley Ranch III, Springfield, Sunrise Mountain, West Hills, and Woodland Hills developments; (4) Nigro Construction, Inc. in the Desert Sage development; (5) Santa Fe Builders, Inc. in the El Paseo development; and (6) Woodside Homes Nevada, Inc. (“Woodside”) that closed escrow on or before November 24, 1999, when originally sold by Woodside in the Cimarron Village North, Crimson Ridge aka Discovery Pointe, Discovery Hills, Foothills Ranch, Foothills Ranch South, Greyhawk Estates, Greyhawk Villages, Heather Glen, Quail Ridge, Sahara Summit, Westlake Village, and Woodridge developments that were plumbed by Sharp Plumbing, Inc. (“Plumber”) and are believed to contain Kitec or PlumbBetter plumbing systems (hereinafter “the Sharp-Plumbed Homes”) TO NOTIFY THESE CLASS MEMBERS THAT A SETTLEMENT HAS BEEN REACHED WITH PLUMBER WITH RESPECT TO THE SHARP PLUMBLED HOMES THAT WILL CREATE A SETTLEMENT FUND FOR THE BENEFIT OF THE OWNERS OF THE SHARP PLUMBLED HOMES TO CONTRIBUTE TOWARDS THE REPLUMB OF THESE HOMES (“THE SHARP SETTLEMENT”).

**Do not hire or contact an independent plumber to perform a replumb. Please read this notice in its entirety for information regarding your rights to the replumb.**

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DUEDATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Sharp Settlement. After your Request to Join The Sharp Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	DECEMBER 1, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	DECEMBER 1, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	DECEMBER 1, 2009
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by this Settlement</b> and will be eligible to receive the benefits of the Settlement if your home is one of the Sharp-Plumbed Homes.	N/A

- FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Sharp Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Sharp Settlement. The hearing will be held on **DECEMBER 15, 2009**, at 10:30 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.
- Your rights and options under this Settlement – **and the Due Dates for each** – are explained in this Notice.
- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Partial Class Settlement under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Class who is impacted by this Partial Settlement. (If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.) You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec plumbing systems and/or components ("Kitec") manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Homeowners if approved by the Court?

If approved by the Court, this Partial Settlement will create a settlement fund in the amount of **\$6,434,593.33** to be used for the benefit of the owners of the Sharp Plumberd Homes to help pay for the replumb of homes with Kitec plumbing systems. This Partial

Settlement resolves claims related to approximately 3,615 homes plumbed by Plumber. The funds paid by or on behalf of Plumber will be combined with a share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below) and any other funds recovered from other parties, for the replumb of the Sharp Plumbed Homes with a Court-approved repair. The money received under this settlement will not be allocated to the Sharp-Plumbed Homes on a pro-rata basis. Rather, the allocation, if any, is based on various considerations that have been presented to the Court for approval.

#### **4. Are additional funds anticipated from other parties?**

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities (“Ipex Settlement”). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court’s order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is **not contingent** upon the outcome of the Ipex Settlement appeal. Additionally, Class Counsel is continuing to pursue the builders responsible for constructing the Sharp-Plumbed Homes for additional funds to benefit the Sharp-Plumbed Homes. Of course, the success of neither the additional claims against the builders nor the Ipex Settlement appeal is guaranteed, but Class Counsel intends to pursue both vigorously on behalf of the Class. Settlements with Avante, KB, and Nigro have already been reached and preliminarily approved by the Court. If you are the owner of a KB Subclass B home, you should have already received that notice. If you are the owner of an Avante Subclass or Nigro Subclass home, you should be receiving a separate notice contemporaneously with this notice.

#### **5. How will this Settlement be funded?**

The specific funding for this Settlement is as follows: \$6,434,593.33 from Plumber and/or its insurance carriers.

#### **6. Why is this a class action and what is a class?**

In a class action lawsuit, one or more people called “Representative Plaintiffs” sue on behalf of other people who have similar claims. All of these people together are known as the “Class” or “Class Members.” One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschläger, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre.

#### **7. Why have the Class and Plumber decided to settle?**

The Court has not decided in favor of the Class or Plumber. Plumber vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Plumber contends that its plumbing systems were properly constructed and installed in accordance with appropriate care, relevant standards, and “good practice,” that Class claims have no basis in law or fact, that Plumber has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

#### **8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: **a)** You are the owner of a home constructed by the following homebuilders in the developments described below: (1) Maya, LLC dba Avante Homes in the Durango Springs I-II developments; (2) Champion Homes Nevada, Inc. in the East Ranch and Hunters Ridge developments; (3) KB Home Nevada Inc. (“KB”) that closed escrow on or before May 1, 2001, when originally sold by KB in the Balboa Park, Black Mountain Vistas, Brentwood, Brookfield, Canyon Pointe, Canyon Ridge Estates, Canyon Springs, Cheyenne Ridge, Crestwood, Eastridge, Fallbrook, Highland Hills, Morning View, Paradise Hills, Rancho Ridge, Saratoga, Sentosa, Silverado, Silverado Pointe, Silverado Ridge, Silverado Springs, South Valley Ranch, South Valley Ranch III, Springfield, Sunrise Mountain, West Hills, and Woodland Hills developments; (4) Nigro Construction, Inc. in the Desert Sage development; (5) Santa Fe Builders, Inc. in the El Paseo development; and (6) Woodside Homes Nevada, Inc. (“Woodside”) that closed escrow on or before November 24, 1999, when originally sold by Woodside in the Cimarron Village North, Crimson Ridge aka Discovery Pointe, Discovery Hills, Foothills Ranch, Foothills Ranch South, Greyhawk Estates, Greyhawk Villages, Heather Glen, Quail Ridge, Sahara Summit, Westlake Village, and Woodridge developments; **b)** That home contains, or at any time contained, a Kitec or PlumbBetter plumbing system installed by Plumber; and **c)** You did not previously opt out of this class action. If you own a home included in this Settlement but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

#### **9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court’s final approval and advised of the steps that you need to take in order to participate in the benefits provided by the Settlement. The notice of the Court’s final approval will explain what steps, if any, you need to take and will include any necessary claims forms that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all of the parties will be restored to the position they were in before the Settlement was reached.

**11. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

This is not a cash settlement. Any benefits obtained for the Class under this settlement will only go towards funding a replumb of your Kitec or PlumbBetter plumbing system. If anything, you will only be entitled to a replumb, **you are not entitled to a monetary payment**. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you **may** be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**12. If I previously excluded myself as a member from the Class Action, can I still accept the benefits of this Settlement?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 17 below. **If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before DECEMBER 1, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.**

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**13. What if I don't want to be part of this Settlement?**

If you do not wish to receive the benefits provided by this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. **If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Plumber on these claims later.**

**14. If I exclude myself, may I pursue a claim against Plumber independently?**

No. If you exclude yourself from this Settlement, you **will not** be entitled to pursue an independent claim against Plumber concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**15. How do I tell the Court if I do not like the Settlement?**

If you own a Sharp-Plumbed Home, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, may approve the Settlement despite objections, and all members of the Class will be bound by this Partial Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The **Sharp** Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Sharp Settlement.
- Your address to confirm that you are the owner of a Sharp-Plumbed Home.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before DECEMBER 1, 2009, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Sharp Settlement Objections*

## **IF YOU DO NOTHING**

### **16. What happens if I do nothing?**

If you do nothing, **you will be bound by this Settlement** and will be eligible to receive the benefits of the Settlement if you are the owner of a Sharp-Plumbed Home. If this Settlement is finally approved by the Court, you will receive further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Plumber on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Plumber.

## **THE LAWYERS WHO REPRESENT THE CLASS AND WHO NEGOTIATED THIS SETTLEMENT**

### **17. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes the owners of Sharp-Plumbed Homes. Together, these attorneys are called Class Counsel. **You will not be individually charged for these lawyers.** The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard	Francis Lynch, Charles Hopper, & Sergio Salzano
Kemp, Jones & Coulthard, LLP	Lynch, Hopper & Salzano, LLP
Wells Fargo Tower, 17 <sup>th</sup> Floor	231 South Third Street, #130
3800 Howard Hughes Parkway	Las Vegas, NV 89101
Las Vegas, NV 89169	

### **18. How will these attorneys be paid?**

Class Counsel negotiated with Plumber to be paid 25% of this Settlement as their fee and cost reimbursement as part of this Settlement. This fee will **not** reduce the amount ultimately dedicated to fund the replumb of the Sharp-Plumbed Homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## **The Court's Fairness Hearing**

### **19. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on **DECEMBER 15, 2009**, at **10:30 a.m.** At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

**The Fairness Hearing will be held at:**

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### **20. Do I have to come to the Fairness Hearing?**

No, you are **not** required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### **21. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## **Getting More Information**

### **22. Where can I receive more information about this Settlement?**

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

### **SUMMARY OF SETTLEMENT AGREEMENT**

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control. You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 17 above.

**1. Creation of Qualified Settlement Fund.** A fund or funds will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Plumber and/or its insurers in settlement of the claims of the owners of the Sharp-Plumbed Homes (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Plumber and/or its insurers will pay a total sum of \$6,434,593.33 to the Qualified Settlement Fund for the benefit of the owners of the Sharp-Plumbed Homes within 90 days following notice of entry of the Court's Order granting preliminary approval of this Partial Settlement.

**2. Use of the Qualified Settlement Fund.** Upon Plumber's funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the owners of the Sharp-Plumbed Homes via settlement or otherwise with the goal and intention of funding full replumbs of the Sharp-Plumbed Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Sharp-Plumbed Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Court-selected Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Sharp-Plumbed Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Sharp-Plumbed Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will **NOT** be entitled to any other or any further relief of any time or nature from Plumber or from the Claims Administrator. However, it is the intent of the Parties that Plumber will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Sharp-Plumbed Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Sharp-Plumbed Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Plumber, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Sharp-Plumbed Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Sharp-Plumbed Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Sharp-Plumbed Home following the Final Fairness Hearing.

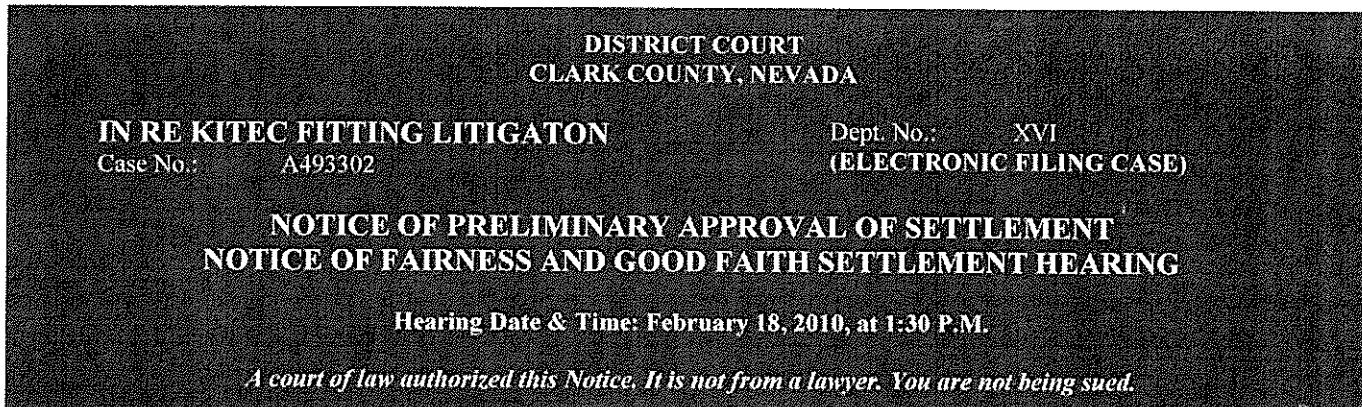
**3. Dismissal of Claims Against Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Plumber of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Plumber relating to the Sharp-Plumbed Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the owners of the Sharp-Plumbed Homes will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Plumber from any and all conceivable losses, damages or injuries arising from or in any way related to the Sharp-Plumbed Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Plumber arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Sharp-Plumbed Homes, specifically excluding any claims for personal injury. The owners of the Sharp-Plumbed Homes reserve any claims, rights, or remedies against: 1) any non-Kitec or non-PlumbBetter claim regarding the Subclass Homes (as to Plumber); 2) any Class claim not specifically related to the Subclass Homes (as to Plumber); 3) any parties other than Plumber, specifically including but not limited to the builders of their Settlement Subclass Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder; 4) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing; and 5) any personal injury claim. Additionally, the owners of the Sharp-Plumbed Homes recognize that they may have some claim, demand, or cause of action against the Plumber of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Plumber. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the owners of the Sharp-Plumbed Homes therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Owners of the Sharp-Plumbed Homes.** This Settlement is **NOT CONTINGENT** upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the owners of the Sharp-Plumbed Homes bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Sharp-Plumbed Homes, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the owners of the Sharp-Plumbed Homes.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident



**TO:** ALL OWNERS OF RECORD OF HOMES WITHIN RICHMOND SUBCLASS C – YOUR LEGAL RIGHTS ARE  
AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes built by Richmond American Homes of Nevada, Inc. ("Builder") and plumbed by Sharp Plumbing, Inc. ("Plumber") within Richmond Subclass C, which are believed to contain Kitec and/or PlumBetter plumbing systems and are located within the communities listed at the end of this Notice and published pursuant to Court Order to notify Richmond Subclass C members that:

- This Settlement will create a settlement fund for the benefit of Richmond Subclass C members to pay for the replumb of homes with Kitec and PlumBetter plumbing systems. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Richmond Subclass C Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Richmond Subclass C Settlement. The hearing will be held on February 18, 2010 at 1:30 P.M., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada, 89101.

YOUR LEGAL RIGHTS AND CHOICES		DEADLINE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS (“OPT-OUT”) AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class (“Opt-Out”), but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin Richmond Subclass C Settlement. After your Request to Rejoin Richmond Subclass C Settlement is received, you will be eligible to receive the benefits contemplated by the Settlement.	FEBRUARY 8, 2010
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the benefits as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	FEBRUARY 8, 2010
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the deadline.	FEBRUARY 8, 2010
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of Richmond Subclass C.	N/A

- Your rights and options under this Settlement – **and the deadlines for each** – are explained in this Notice.
- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this settlement on behalf of Richmond Subclass C under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of Richmond Subclass C. If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumBetter plumbing systems and/or components (“Kitec”) manufactured or distributed by or on behalf of Defendants IpeX Inc., and IpeX USA, LLC (collectively, “IpeX Defendants”), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that Kitec in Clark County, Nevada is defective because it fails or may fail when exposed to water. This Class Action seeks money damages together with attorneys’ fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Richmond Subclass C homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund to be used for the benefit of Richmond Subclass C Members to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 976 homes constructed and sold by Builder and plumbed by Plumber. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder’s negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of

Kitec plumbing, Ipex Defendants, as discussed in paragraph 5 below. These combined settlement funds will then be used on behalf of Richmond Subclass C members to fund the replumb of the Kitec plumbing system with a Court-approved repair.

**4. Were there Richmond Subclass A and Richmond Subclass B Settlements?**

Builder previously reached a settlement with approximately 1,251 similarly situated homeowners in this Class Action. The 1,251 home settlement resulted in Richmond Settlement Subclass A. All of the 1,251 homes in Richmond Subclass A were plumbed by Builder's plumbing contractor, Classic Plumbing, Inc. After the Richmond Subclass A settlement was completed, the parties discovered additional homes built by Builder and plumbed by other plumbing subcontractors, including Plumber. Based on this discovery, Builder reached a settlement with approximately 2,472 similarly situated homeowners in this Class Action. The 2,472 home settlement resulted in Richmond Settlement Subclass B.

**5. Are additional funds anticipated from other parties?**

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement has been approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement is therefore currently segregated in various protected accounts pending the resolution of the appeal. The Richmond Subclass C Settlement is **not contingent** upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of Richmond Subclass C. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of Richmond Subclass C, will make efforts to secure a new settlement with, or obtain a judgment against, the Ipex Defendants in the Class Action.

**6. How will this Settlement be funded?**

The specific funding for this Settlement is as follows: \$3,750,000.00 from Builder and/or its insurance carriers, and \$2,098,400.00 from the previously Court-approved Ipex Settlement (for Builder's share of the Ipex Settlement funds as it relates to the Richmond Subclass C homes), and assuming the Ipex Settlement appeal is resolved in a manner that allows for the release and distribution of the Ipex Settlement funds.

**7. Why is this a class action and what is a Subclass?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Settlement described in this Notice pertains only to the Richmond Subclass C homes.

**8. Why have the Subclass and Builder decided to settle?**

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and "good practice;" that Class claims have no basis in law or fact; that Builder has meritorious affirmative defenses to all claims; and that the class action should be dismissed. Both sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**9. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) you own a home within Richmond Subclass C; b) your home contains, or at any time contained, a Kitec plumbing system and/or components; and c) you did not previously opt out of this class action. If you do not own a home within Richmond Subclass C, you are not a part of this settlement. If you are a tenant of a home within Richmond Subclass C, please ensure that this Notice is given to the landlord or owner of the home because it concerns their legal rights and obligations. If you own a home in Richmond Subclass C, but previously opted out of this class action, you may still take part in this Settlement by submitting a Request to Rejoin the Class. The Richmond Subclass C residences are found within the communities listed at the end of this Notice.

**10. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claim Administrator to take part in this Settlement.

**11. What happens if this Settlement is not approved by the Court?**

If this Settlement is not approved by the Court at the Fairness Hearing, then the Settlement will terminate and all Richmond Subclass C Members and parties will be restored to the position they were in before the Settlement was reached.

**12. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement and the Ipex Settlement are resolved, the Claims Administrator will begin to schedule replumbs for those Richmond Subclass C Members that have returned their Claim Form, with priority given to homes that are at greater risk for Kitec failures.

**13. What if I already replumbed my home, or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, then you may be entitled to reimbursement up to a maximum amount of \$12,500, subject to approval by the Claim Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claim Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **NOTE: DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**14. If I previously excluded myself as a member from the Class Action, can I still accept the Settlement replumb?**

Yes, but you must first withdraw your prior Opt-Out and submit a Request to Rejoin the Subclass Settlement by February 8, 2010. A Request to Rejoin may be obtained from Class Counsel. If you previously opted out of this class action and do not submit the Request to Rejoin by February 8, 2010, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**15. What if I do not want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder and/or Plumber on these claims later.

**16. If I exclude myself, may I pursue a claim against Builder and/or Plumber independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder and/or Plumber concerning Kitec plumbing systems.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**17. How do I tell the Court if I do not like the Settlement?**

If you are a Richmond Subclass C Member, then you may tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, is entitled to approve the Settlement in spite of objections and all members of Richmond Subclass C will be bound by the Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: Notice Of Objection Or Appearance - Richmond Subclass C Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to Richmond Settlement Subclass C.
- Your address to confirm that you are a Richmond Subclass C Member.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before February 8, 2010, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

**IF YOU DO NOTHING**

**18. What happens if I do nothing?**

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of Richmond Subclass C. If this Settlement receives final approval from the Court, you will receive a Claim Form with further instructions to request the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or

benefit of this Settlement and you will also **give up your right to sue** Builder and/or Plumber on these claims later. As a Richmond Subclass C Member, you will be bound by the decision of the Court even if you do not accept the Settlement. In other words, you will not be able to start a lawsuit later or be part of another lawsuit against Builder and/or Plumber regarding the claims in this lawsuit after this Settlement. Therefore, if the Court approves this Settlement and you choose not to accept it, you will have **no** further rights against Builder or Plumber.

## **THE LAWYERS WHO REPRESENT SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT**

### **19. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes Richmond Subclass C. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard Kemp, Jones & Coulthard, LLP Wells Fargo Tower, 17 <sup>th</sup> Floor 3800 Howard Hughes Parkway Las Vegas, NV 89169	Francis Lynch, Charles Hopper, & Sergio Salzano Lynch, Hopper & Salzano, LLP 231 South 3 <sup>rd</sup> Street, Suite #130 Las Vegas, NV 89101
---	--

### **20. How will these attorneys be paid?**

Class Counsel negotiated with Builder to be paid \$703,700, plus a portion of the funds remaining, if any, after all Richmond Subclass C members' claims have been resolved, for their attorneys' fees and costs as part of this Settlement. These attorneys' fees and costs **will not** reduce the amount ultimately paid to fund the replumb of Richmond Subclass C homes. This fee does not include any fees previously awarded to Class Counsel by way of the Iplex Settlement. The Court must approve this fee as reasonable during the Fairness Hearing.

## **The Court's Fairness Hearing**

### **21. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing on February 18, 2010, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorneys' fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
**Courtroom 12D** (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### **22. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### **23. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 17) that states you wish to appear at the Fairness Hearing and speak.

## **Getting More Information**

### **24. Where can I receive more information about this Settlement?**

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action, including all Settlement documents, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## **SUMMARY OF SETTLEMENT AGREEMENT**

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the settlement agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect of the settlement on you. You may obtain a copy of the settlement agreement and accompanying documents by making a written request to Kemp, Jones & Coulthard, LLP, or Lynch, Hopper &

Salzano, LLP, Class Counsel, at the addresses provided in this notice. You may also review these documents at the Clark County District Court.

**1. Claims Administrator.** A third-party administrator (“Claims Administrator”) – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, a plumbing contractor approved by the Claims Administrator (“Approved Plumbing Contractors”) will perform “Replacement Plumbing,” as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT.**

A. The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

B. Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will NOT be entitled to any other or any further relief of any time or nature from Builder, Plumber, or the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Richmond Subclass C Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builders and/or its insurers in settlement of the Subclass Claims (the “Qualified Settlement Fund”). Subject to the terms of the Settlement Agreement, the total sum of **\$5,848,400** shall be paid to the Qualified Settlement Fund for the benefit of Richmond Subclass C following notice of entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of Richmond Subclass C in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and assuming a favorable resolution of the Iplex Settlement appeal. The Qualified Settlement Fund will be allocated in the following manner:

A. **Replumb Fund.** **\$4,762,600** of the Qualified Settlement Fund will be designated as the “Replumb Fund” to cover the costs for the Replacement Plumbing at the Richmond Subclass C Residences.

**A.I** In the limited circumstance where a Richmond Subclass C Member, or his agent or representative, has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages relating to the Settled Claims caused by a failure of the Kitec Plumbing System, then that Subclass Member may be entitled to either: a) a replumb at no cost; or b) reimbursement of the amount equal to the Replacement Plumbing cost provided within the repair schedule for Richmond Subclass C homes. If funds remain after all Subclass repairs are performed and all contingency costs covered, then the Claims Administrator may, at its discretion, further reimburse Richmond Subclass C Members who have monetary damages above the Replacement Plumbing cost provided within the repair schedule for Richmond Subclass C homes, up to the total amount of \$12,500 (Replacement Plumbing cost provided within the repair schedule for Richmond Subclass C homes plus additional reimbursement amount). In order to qualify for a reimbursement, the Richmond Subclass C Member must submit a Claim Form to the Claims Administrator. The Claims Administrator will review the merits of the Claim Form, and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 IN NO EVENT WILL A RICHMOND SUBCLASS C MEMBER BE ENTITLED TO RECEIVE THE COMPENSATION DESCRIBED IN SECTION A.1 ABOVE AND REPLACEMENT PLUMBING.** In the event a Richmond Subclass C Member qualifies for the compensation described in Section A.1 above, it is solely up to the Richmond Subclass C Member's discretion to determine whether the Richmond Subclass C Member wants the compensation described in Section A.1 above in lieu of the Replacement Plumbing.

**B. Contingency Fund.** \$187,900 of the Qualified Settlement Fund will be designated as the “Contingency Fund,” and will serve to cover: (a) the Parties’ best estimate of the reasonable costs related to the Replacement Plumbing, which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement (“Work”) by the Approved Plumbing Contractor(s); (c) the Parties’ best estimate of the reasonable costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of reimbursements as described within Section 3(A)(A.1).

**C. Claims Administration Fund.** \$194,200 of the Qualified Settlement Fund will be designated as the “Claims Administration Fund” to pay for the cost of services provided by the Claim Administrator under the Settlement Agreement. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; and quality control.

**D. Class Counsel’s Fees and Costs.** \$703,700 of the Qualified Settlement Fund will be paid to Class Counsel for Class Counsel’s fees and costs. Class Counsel is also entitled to a portion of the funds remaining in the Qualified Settlement Fund, if any, after all Richmond Subclass C Members’ claims have been resolved.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claim Administrator. Neither Builder, Plumber, Class Counsel, nor the Claim Administrator guarantee or warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumblings and/or Work. Each Richmond Subclass C Member will look solely to the persons’, contractors’ (including the Approved Plumbing Contractors’), suppliers’, and/or manufacturers’ guarantees and warranties, if any, as the sole and exclusive guarantors and/or warrantors for the Settlement Agreement, the Replacement Plumbing and/or all other Work.

**5. Settled Claims.** Settled Claims are those claims for which Richmond Subclass C members are releasing the Builder and Plumber. Settled Claims mean any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Richmond Subclass C Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Richmond Subclass C Residences (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, against Builder or Plumber, for relief, damages, costs, expenses, attorneys’ fees, or compensation of any kind arising from or in any way related to the claims set forth in the underlying Class Action Complaint for damages. Settled Claims specifically excludes any claim for personal injury.

**A.** Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (b) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (c) any claim for consequential damages relating to or caused by the Kitec Plumbing systems including, but not limited to, claims relating to mold caused by the Kitec Plumbing systems.

**B.** This Settlement does not address or contemplate any claims for personal injury.

**6. Dismissal of the Amended Complaint.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Richmond Subclass C Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and full payment by Builder of its share of the Settlement Funds to the Qualified Settlement Fund, the Amended Complaint against Builder and Plumber will be dismissed with prejudice as to the Richmond Subclass C homes.

**7. Releases.** As a result of the Settlement, the Subclass Representative and the Richmond Subclass C Members, by and through the Subclass Representative, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder to the Qualified Settlement Fund – fully, finally and generally released, acquitted, forever discharged, and absolved, except as

specifically provided for herein, Builder and Plumber from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against Builder and Plumber, arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the underlying and operative Amended Complaint filed in the Class Action.

**A.** Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing.

**B.** Subclass Representative and Richmond Subclass C Members, by and through their Subclass Representative, recognize that they may have some claim, demand, or cause of action against the Builder and Plumber of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. This Settlement Agreement will deprive the Richmond Subclass C Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder and Plumber.

**C.** The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Richmond Subclass C Members to be true, and the Richmond Subclass C Members and Subclass Representative therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representative and Richmond Subclass C Members also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Richmond Subclass C Members.

**8. Potential Risk to Richmond Subclass C Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, Richmond Subclass C Members and Class Counsel bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not transferred to Class Counsel, then Class Counsel, on behalf of Richmond Subclass C, will make efforts to secure a re-newed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, the Ipex Defendants relating to this Settlement Subclass, Class Counsel will immediately fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to \$2,098,400 for the benefit of Richmond Subclass C.

**9. Accrued Interest and Residual Balance of the Qualified Settlement Fund.** Within 30 days of the conclusion of the replumb process and following the final accounting by the Claims Administrator, any and all residual balance in the Qualified Settlement Fund, including all remaining interest income generated by The Qualified Settlement Fund, shall be paid equally (50/50 split) to Builder (as a partial refund) and Class Counsel (as partial compensation for services performed on behalf of the Subclass).

**10. Communities where Richmond Subclass C Homes are Located.**

<b>RICHMOND AMERICAN SUBCLASS C COMMUNITIES*</b>		
Aviara	Belcrest	Berkshire aka Boulder Post
Bonita Hills	Calavera	Carmel Ridge
Cobalt Estates	Coral Crest	Echo Canyon
Galena Pointe	Ladera aka Foxhall Skyline Ph. I	Meridian Hills
Trovare aka Ann/Goldfield		

\*NOTE: Not every home located within these communities is included in the Richmond Subclass C settlement.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
**(ELECTRONIC FILING CASE)**

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: April 21, 2010 at 11:00 A.M.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF HOMES LOCATED WITHIN RHODES SUBCLASS A THAT CONTAIN, OR, AT ANY TIME CONTAINED, A KITEC OR PLUMBBETTER ("KITEC") PLUMBING SYSTEM – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON'T ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes located within the Rhodes Subclass A ("Subclass") and published pursuant to Court Order to notify the Subclass members that:

- A proposed settlement ("Settlement") resolving Subclass claims in this case has been reached between Plaintiff Subclass Representatives and Defendant Rhodes Design and Development Corp., dba Rhodes Homes ("Builder" or the "Released Party" – see Paragraph 7D on Page 8).
- This Settlement will create a settlement fund for the benefit of the Subclass members to pay for the replumb of homes with Kitec and PlumbBetter plumbing systems. Under certain circumstances approved by the Claims Administrator over this Settlement, settlement funds may also be used to reimburse homeowners for reasonable costs, or a portion of reasonable costs, already expended by homeowners in the replumb or repair of their Kitec or PlumbBetter plumbing system.

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on April 21, 2010 at 11:00 a.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b> DUE DATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out"), but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin Subclass Settlement. After your Request to Join Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Rhodes Settlement.	APRIL 4, 2010
<b>ACCEPT SETTLEMENT</b>	If you wish to participate in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	APRIL 4, 2010
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the deadline.	APRIL 4, 2010
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and be eligible to receive the benefits of the Settlement if you are a member of the Subclass.	N/A

- Your rights and options under this Settlement – and the deadlines for each – are explained in this Notice.
- The Court in charge of this litigation must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this settlement on behalf of the Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Subclass. If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this settlement. This notice package explains

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec or PlumBetter (“Kitec”) plumbing systems and/or components manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, “Ipex Defendants”), and installed within homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec or PlumBetter plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec and PlumBetter plumbing systems or components in Clark County, Nevada are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury. Any proceeds from this Class Action, after attorneys fees and costs have been paid, will be used for the benefit of Class Members under Court supervision.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a \$200,000.00 Settlement Fund (less attorneys fees and costs set forth below) to be used for the benefit of the Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 26 homes constructed by Builder. This Settlement will ultimately be combined with the Subclass’s pro rata share of settlement funds, if any, recovered from other defendants (such as the \$90 million dollar settlement with manufacturer of Kitec plumbing, discussed below in paragraph 4) involved in this class action on behalf of the Subclass. The combined settlement funds will then be used on behalf of the Subclass to fund the replumb of the Kitec plumbing system with a Court-approved repair. Under certain circumstances approved by the Claims Administrator over this Settlement, Settlement funds may also be used to reimburse homeowners for reasonable costs, or a portion of reasonable costs, already expended by homeowners in the replumb or repair of their Kitec plumbing system:

- a) For homeowners who have not already replumbed their home, this Settlement will seek to fund the replumb of the Kitec plumbing system currently installed at their home with the Court-approved repair approved by this Settlement.
- b) For homeowners who have previously paid for a replumb out of pocket, this Settlement will initially provide a pro rata distribution of the Settlement to reimburse the homeowner for out-of-pocket expenses. If homeowners’ existing out-of-pocket expenses exceed the amount of the initial pro-rata distribution, homeowners may request additional reimbursement for reasonable expenses from the Claims Administrator. If the request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

### 4. Are additional funds anticipated from other parties?

Class Counsel has reached a \$90,000,000.00 settlement with the manufacturer of the Kitec plumbing system and related entities that has been finally approved by the Court (the “Ipex Settlement”). After the final size of the Class is determined following trial and any appeal, the pro rata share of the Ipex Settlement will be combined with this Settlement, if it receives final approval, to create a combined settlement fund to carry out replumbs and reimbursements on behalf of the Subclass. If sufficient money is not recovered on behalf of the Subclass, Class Counsel will petition the Court for further direction regarding how Settlement funds should be distributed for the benefit of the Class. Before this Settlement can be used for the replumb or reimbursement of Subclass homes, however, it must first receive final approval from the Court and survive any appeals that may be filed by other parties to this action.

### 5. Why is this a class action and what is a Subclass?

In a class action lawsuit, one or more people called “Representative Plaintiffs” sue on behalf of other people who have similar claims. All of these people together are known as the “Class” or “Class Members.” One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Settlement described in this Notice pertains only to Rhodes Subclass A.

**6. Why have the Subclass and Builder decided to settle?**

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contend that their homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and “good practice;” that Class claims have no basis in law or fact; that Builder has meritorious affirmative defenses to all claims; and that the class action should be dismissed. Both sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**7. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) you own a home within Rhodes Subclass A that contains a Kitec plumbing system; and b) you have not previously opted out of the class action. If you do not own one of the homes within Subclass, you are not a part of this settlement. If you are a tenant of a home listed within Subclass, please ensure that this Notice is given to the landlord or owner of the home because it concerns their legal rights and obligations. If you own a home in Subclass, but previously opted out of this class action, you may still take part in this settlement by submitting a Request to Rejoin the Class.

**8. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court’s final approval and provided with a Claim Form to request a replumb. The notice of the Court’s final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claim Administrator to take part in this Settlement.

**9. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, then the Settlement will terminate and all Subclass Members and parties will be restored to the position they were in before the Settlement was signed.

**10. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, the Claims Administrator will begin to schedule replumbs for Subclass homes that have returned their Claim Form.

**11. What if I already replumbed my home, or have already suffered damages from a Kitec fitting leak?**

Under this settlement, you are only entitled to a replumb, you are not entitled to a monetary payment. If, however, you already paid out-of-pocket for the replumb of your home, then you may be entitled to reimbursement. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form (which you will receive upon final approval of this Settlement) and any supporting documentation that you have to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response to you within 60 days of receipt of the Claim Form. If the Claim Form is approved by the Claim Administrator for reimbursement, you will then be entitled to a pro-rata share of the Settlement Fund for your home. If your existing out-of-pocket expenses exceed the amount of the initial pro-rata distribution, you may request additional reimbursement for reasonable expenses from the Claims Administrator. If the request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**12. What if I previously accepted money from Builder and executed a release of claims?**

If you previously received funds from Builder to pay for a Kitec replumb and executed a release of all claims, then you are not entitled to an initial pro-rata distribution from this Settlement, but may be eligible for reimbursement if you have additional out-of-pocket expenses because of your replumb or damages from a Kitec fitting leak that exceed the amount you previously accepted from Builder. To request reimbursement for reasonable costs above the amount you previously accepted from Builder, you must submit a Claim Form and any supporting documentation that you have to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response to you within 60 days of receipt of the Claim Form. If your request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If you previously excluded yourself as a member from the Class Action, can you get back in to accept the Settlement replumb?**

Yes, but you must first withdraw your prior “opt-out” and submit a Request to Rejoin the Subclass Settlement by April 4, 2010. A Request to Rejoin is included within this Notice and may also be obtained from Class Counsel. If you previously opted out of this class action and do not submit the Request to Rejoin by April 4, 2010, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

## YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT

### 14. What if I don't want to be part of this Settlement?

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.

### 15. If I exclude myself, may I pursue a claim against Builder independently?

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder concerning Kitec Fittings, although you will still possess your claims against other potential defendants in this class action.

## YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

### 16. How do I tell the Court if I do not like the Settlement?

If you are a member of the Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, is entitled to approve the Settlement in spite of objections and all members of Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- RHODES SUBCLASS A SETTLEMENT
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Rhodes Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before April 4, 2010, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will not receive a replumb or benefit of this Settlement and you will also give up your right to sue Builder on these claims later. As a member of Subclass, you will be bound by the decision of the Court even if you do not accept the Settlement. In other words, you will not be able to start a lawsuit later or be part of another lawsuit against Builder regarding the claims in this lawsuit after this Settlement. Therefore, if the Court approves this Settlement and you choose not to accept it, you will have no further rights against Builder, although you will still retain all rights against all other parties to this litigation.

## THE LAWYERS WHO REPRESENT SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes Subclass. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Although Class Counsel's fee agreement with Class Representatives entitle them to request a contingency fee in an amount equal to forty percent (40%) of any sum recovered in any settlement reached less than ninety (90) days before trial, Class Counsel has agreed to seek a twenty-five percent (25%) contingency fee from the money paid by Builder to fund this Settlement. If Class Counsel were awarded attorneys fees in the amount of 40% of this Settlement, then Class Counsel's attorneys fees would total approximately \$80,000.00. By requesting attorneys fees in the amount of 25% of the Settlement plus a portion of Builder' share of the pending Ipex Settlement, attorneys fees requested by Class Counsel will be approximately \$50,000.00, plus costs awarded by the Court, which will result in a reduction of attorneys fees requested by Class Counsel of approximately \$30,000.00. Class Counsel's attorney's fee

request must still be approved by the Court as reasonable during the Fairness Hearing on this matter, in addition to any costs awarded by the Court.

### **The Court's Fairness Hearing**

#### **20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing on April 4, 2010, at 11:00 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Clark County District Court  
Dept. 16, Courtroom 12D  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89101

#### **21. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

#### **22. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

### **Getting More Information**

#### **23. Where can I receive more information about this Settlement?**

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action, including all Settlement documents, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

### **SUMMARY OF SETTLEMENT AGREEMENT**

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. This is **only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.**

**1. Claims Administrator.** A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

**2. Replacement Plumbing.** As a result of the Settlement, plumbing contractors approved by the Claims Administrator ("Approved Plumbing Contractors") will perform "Replacement Plumbing," as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT.**

**A.** The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, WIRSBO with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the Subclass Residence and other property in or on the Subclass Residence to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing.

**B.** Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder (including any and all of its employees,

agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Subclass Residences is completed.

**3. Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and/or its insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder and/or its insurers will pay a total sum of \$200,000 to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty (30) days of notice of entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure. After the final size of the Class is determined following trial and any appeals, this Fund will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2, above.

**A.1 Reimbursements.** In the limited circumstance where a Subclass Member, or his agent or representative, has, prior to the Formal Fairness Hearing, replaced their original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB OF THEIR ORIGINAL KITEC PLUMBING SYSTEM.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who have monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form, and provide a response to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

**A.2 Contingency Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

**A.4 Claims Administration Fund.** After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

**A.5 Class Counsel's Fees and Costs.** Upon funding of the Qualified Settlement Fund, a portion of the Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released to the Claim Administrator for payment to Class Counsel. Further, upon release of the Ipex Settlement Funds and after the final size of the Class is determined following trial and any appeals, any additional attorney's fee awarded by the Court based upon Builder's

pro rata share of the Ipex Settlement shall be placed within the "Class Counsel's Fees and Costs" portion of the Qualified Settlement Fund and immediately released to the Claim Administrator for payment to Class Counsel.

**4. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumblings and Work, at a Subclass Residence under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claim Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumblings and/or Work. Each Subclass Member will look solely to the persons' contractors' (including the Approved Plumbing Contractors'), suppliers' and/or manufacturers' guarantees and warranties, if any, as the sole and exclusive guarantors and/or warrantors for the Settlement Agreement, the Replacement Plumbing and/or all other Work.

**5. Settled Claims.** Settled Claims mean any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Subclass Representative and any and/or Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Subclass Residences (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in the Court or any other court or forum, regardless of legal theory, against Builder for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the Amended Complaint and/or the Class Action and/or any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences and any claim for relief or compensation by the Representative Plaintiff and/or any members of the Settlement Subclass, including but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing.

A. Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim for breach or violation of any federal, state, common or other law; (b) any claim for breach of any duty imposed by law, by contract or otherwise; (c) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (d) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (e) any claim for consequential damages relating to or caused by the KITEC PLUMBING SYSTEMS including, but not limited to, claims relating to mold caused by the KITEC PLUMBING SYSTEMS.

B. This Settlement does not address or contemplate any claims for personal injury.

**6. Dismissal of the Amended Complaint.** Within five (5) days after notice of entry of an Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and full payment by Builder of the Qualified Settlement Fund, the Amended Complaint against Released Party will be dismissed with prejudice.

**7. Releases.** As a result of the Settlement, the Subclass Representative and the Subclass Members, by and through the Subclass Representative, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder of the Qualified Settlement Fund – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that the Subclass Members and the Subclass Representative has or may have against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the Amended Complaint (7<sup>th</sup>) filed on or about April 1, 2009, in the Class Action.

A. Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumblings.

B. Subclass Representative and Subclass Members, by and through their Subclass Representative, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. It is the intention of the Subclass Representative in executing the Settlement Agreement that it will deprive Subclass Representative and the Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

C. The facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Settlement Subclass to be true, and the Subclass Members and Subclass Representative therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representative and Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Subclass Members.

D. The Released Party (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will not be subject to liability or expense of any kind to Subclass Representative or any Subclass Members arising from or in any way related to any Settled Claim, except as provided in this Section D. Upon entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, Subclass Representative and each and all of the Subclass Members will be barred from initiating, asserting, or prosecuting any Settled Claims against the Released Party (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

**THIS NOTICE PERTAINS TO THE HOME LOCATED AT THE FOLLOWING ADDRESS:**

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date & Time: JUNE 16, 2010, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF KB HOME RESIDENCES CONTAINING KITEC PLUMBING SYSTEMS AND WHOSE HOMES ORIGINALLY CLOSED ESCROW FROM MAY 1, 2001 TO JANUARY 31, 2004 WHEN SOLD BY KB HOME – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by KB HOME NEVADA INC. (“Builder”) that are believed to contain Kitec or PlumbBetter plumbing systems and are located within the following developments: Balboa Park, Black Mountain Vistas, Brentwood, Crestwood, Desert Willows, Eldorado Pines, Eldorado Trails, Goldrush 6-8, Granite Peaks, Liberty at Silverado Ranch, Liberty at The Orchards, Liberty at Mayfield, Liberty at Tierra Linda, Liberty at Warm Springs, Montrose, Morning View, Paradise Hills, Pinecrest, Pinedale, Portofino, Shadow Springs, Silverado Pines, Silverado Springs, Sunset Pines, Tierra Linda (25, 35 & 50), Villas at Tropicana, Villas at Windmill, and Woodland Hills, which closed escrow from May 1, 2001 to January 31, 2004, when originally sold by Builder (“the Settlement Subclass”) to notify the Settlement Subclass members that a Settlement has been reached with Builder that will create a settlement fund for the benefit of the Settlement Subclass members to help pay for the replumb of the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on JUNE 16, 2010, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada. Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b> DUE DATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	MAY 31, 2010
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	MAY 31, 2010
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	MAY 31, 2010
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec plumbing systems and/or components ("Kitec") manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund in the amount of \$6,550,000 to be used for the benefit of the Settlement Subclass to pay for the replumb of homes with Kitec plumbing systems or a portion of those replumbs. This Settlement resolves class claims against Builder related to 3,237 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder will be combined with the Settlement Subclass members' share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below) and any other funds recovered, or which will be recovered in the future for the replumbing of the Settlement Subclass homes with a Court-approved repair.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass. Additionally, Class Counsel has reached a tentative settlement with Sharp Plumbing, Inc. ("Sharp") for additional funds to benefit the Settlement Subclass Homes. A separate Notice regarding the tentative settlement with Sharp benefitting the Settlement Subclass Homes is enclosed with this Notice.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$6,550,000 from Builder.

### 6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre. A Subclass is a smaller subset of a larger Class. The Builder Settlement Subclass Representative is Lisa Brown. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

**7. Why have the Subclass and Builder decided to settle?**

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and “good practice,” that Class claims have no basis in law or fact, that Builder has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and is located within the following developments: Balboa Park, Black Mountain Vistas, Brentwood, Crestwood, Desert Willows, Eldorado Pines, Eldorado Trails, Goldrush 6-8, Granite Peaks, Liberty at Silverado Ranch, Liberty at The Orchards, Liberty at Mayfield, Liberty at Tierra Linda, Liberty at Warm Springs, Montrose, Morning View, Paradise Hills, Pinecrest, Pinedale, Portofino, Shadow Springs, Silverado Pines, Silverado Springs, Sunset Pines, Tierra Linda (25, 35 & 50), Villas at Tropicana, Villas at Windmill, and Woodland Hills, which closed escrow from May 1, 2001 to January 31, 2004, when originally sold by Builder; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court’s final approval and provided with a Claim Form to request a replumb. The notice of the Court’s final approval will explain how to obtain the replumb provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, and as soon as sufficient funds necessary to perform full replumbs of the Settlement Subclass Homes have been aggregated and collected, the Claims Administrator will begin to schedule replumbs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, **you are only entitled to a replumb, you are not entitled to a monetary payment.** If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you **may** be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If I previously excluded myself as a member from the Class Action, can I still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. **If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before MAY 31, 2010, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.**

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I do not want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. **If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.**

**15. If I exclude myself, may I pursue a claim against Builder independently?**

**If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.**

## YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

### 16. How do I tell the Court if I do not like the Settlement?

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The KB Subclass C Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before MAY 31, 2010, with copies sent to the following address:  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Subclass Settlement Objections*

## IF YOU DO NOTHING

### 17. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. You will not be individually charged for these lawyers. The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder to be paid 25% of this Settlement as their fee as part of this Settlement and \$111,684.86 in reimbursed costs. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court final approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on JUNE 16, 2010, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

**21. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

**22. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## **Getting More Information**

**23. Where can I receive more information about this Settlement?**

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

### **SUMMARY OF SETTLEMENT AGREEMENT**

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents, to the extent that written documents have been prepared, for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 18 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and/or its insurers in settlement of the claims of the Settlement Subclass Members (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder will pay a total sum of **\$6,550,000** to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members within 30 days following notice of entry of the Court's Order granting preliminary approval of this Settlement or Class Plaintiffs' execution of the Settlement Agreement, whichever event occurs later.

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. In addition, \$100,000 of the Settlement Fund will be used to purchase and extinguish certain rights held by Sharp Plumbing, Inc. in order to facilitate this Settlement and the Settlement with Sharp Plumbing, Inc. The remaining Settlement sums will then be combined with any other money recovered for the Settlement Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Settlement Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Settlement Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT,** except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Settlement Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Settlement

Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Settlement Subclass Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Settlement Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Settlement Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Settlement Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Settlement Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Settlement Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder relating to the Settlement Subclass Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Settlement Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the Settlement Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Settlement Subclass Homes, specifically excluding any claims for personal injury. The Settlement Subclass Members reserve any claims, rights, or remedies against: 1) any parties other than Builder, specifically including but not limited to the builders of their Settlement Subclass Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing. Additionally, the Settlement Subclass Members recognize that they may have some claim, demand, or cause of action against the Builder of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Settlement Subclass Members therefore expressly assume the risk of the facts turning out to be different than they

believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Settlement Subclass Members.** This Settlement is NOT CONTINGENT upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Settlement Subclass Homes, Class Counsel will fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**  
Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

**Hearing Date & Time: JUNE 16, 2010, at 1:30 p.m.**

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF SHARP SETTLEMENT MEMBERS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by (1) KB Home Nevada Inc. (“KB”) that are believed to contain Kitec or PlumbBetter plumbing systems and are located within the following developments: Balboa Park, Black Mountain Vistas, Brentwood, Crestwood, Desert Willows, Eldorado Pines, Eldorado Trails, Goldrush 6-8, Granite Peaks, Liberty at Silverado Ranch, Liberty at The Orchards, Liberty at Mayfield, Liberty at Tierra Linda, Liberty at Warm Springs, Montrose, Morning View, Paradise Hills, Pinecrest, Pinedale, Portofino, Shadow Springs, Silverado Pines, Silverado Springs, Sunset Pines, Tierra Linda (25, 35 & 50), Villas at Tropicana, Villas at Windmill, and Woodland Hills, which closed escrow from May 1, 2001, to August 31, 2003, when originally sold by KB; and (2) Woodside Homes of Nevada, Inc. (“Woodside”) that are believed to contain Kitec or PlumbBetter plumbing systems and are located primarily in the following developments: Blue Diamond Ranch, Canyons, Castlewood, Chelsea Gardens, Cimarron Village North, Crossings, Discovery Pointe aka Crimson Ridge, Foothills Ranch South, Heather Glen, Premier, Quail Ridge, Sahara Summit, Sahara Sunrise, and Silver Creek, which closed escrow from November 24, 1999, to December 11, 2001, when originally sold by Woodside (hereinafter collectively referred to as “the Sharp-Plumbed Homes”) to notify these class members that a settlement has been reached with Sharp Plumbing, Inc. (“Plumber”) with respect to the Sharp-Plumbed Homes that will create a settlement fund for the benefit of the owners of the Sharp-Plumbed Homes to contribute towards the replumb of these homes (“the Sharp Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Sharp Settlement and set a Fairness and Good Faith Settlement Hearing ("Fairness Hearing") to consider the fairness, adequacy, and reasonableness of the Sharp Settlement. The hearing will be held on JUNE 16, 2010, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada. Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

<b>YOUR LEGAL RIGHTS AND CHOICES</b>		<b>DUEDATE</b>
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Sharp Settlement. After your Request to Join The Sharp Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	MAY 31, 2010
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	MAY 31, 2010
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	MAY 31, 2010
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by this Settlement</b> and will be eligible to receive the benefits of the Settlement if your home is one of the Sharp-plumbed Homes.	N/A

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Partial Class Settlement under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Class who is impacted by this Partial Settlement. If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec plumbing systems and/or components ("Kitec") manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec in Clark County, Nevada, is defective because it fails or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Homeowners if approved by the Court?

If approved by the Court, this Partial Settlement will create a settlement fund in the amount of \$5,000,000 to be used for the benefit of the owners of the Sharp-Plumbed Homes to help pay for the replumb of homes with Kitec. This Partial Settlement resolves claims related to 3,725 homes plumbed by Plumber. The funds paid by or on behalf of Plumber will be combined with a share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec (discussed below) and any other funds recovered from other parties, for the replumb of the Sharp-Plumbed Homes with a Court-approved repair. The money received under this settlement will be allocated to the Sharp-Plumbed Homes on a pro-rata basis.

**4. Are additional funds anticipated from other parties?**

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Class Counsel has reached a tentative settlement with KB Home Nevada Inc. ("KB") for additional funds to benefit the KB-built Sharp-Plumbed Homes. If your home is included in the KB settlement, a separate Notice regarding the tentative settlement with KB benefitting the KB-built Sharp-Plumbed Homes is enclosed with this Notice. Additionally, Class Counsel is continuing to pursue Woodside Home of Nevada, Inc. ("Woodside"), the builder of the non-KB Sharp-Plumbed Homes for additional funds to benefit the Sharp-Plumbed Homes.

**5. How will this Settlement be funded?**

The specific funding for this Settlement is as follows: \$5,000,000 from Plumber and/or its insurance carriers.

**6. Why is this a class action and what is a class?**

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntrye.

**7. Why have the Class and Plumber decided to settle?**

The Court has not decided in favor of the Class or Plumber. Plumber vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Plumber contends that its plumbing systems were properly constructed and installed in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Plumber has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You are the owner of a home constructed by the following homebuilders in the developments described below: (1) KB Home Nevada Inc. ("KB") located in the following developments: Balboa Park, Black Mountain Vistas, Brentwood, Crestwood, Desert Willows, Eldorado Pines, Eldorado Trails, Goldrush 6-8, Granite Peaks, Liberty at Silverado Ranch, Liberty at The Orchards, Liberty at Mayfield, Liberty at Tierra Linda, Liberty at Warm Springs, Montrose, Morning View, Paradise Hills, Pinecrest, Pinedale, Portofino, Shadow Springs, Silverado Pines, Silverado Springs, Sunset Pines, Tierra Linda (25, 35 & 50), Villas at Tropicana, Villas at Windmill, and Woodland Hills, which closed escrow from May 1, 2001, to August 31, 2003, when originally sold by KB; and (2) Woodside Homes of Nevada, Inc. ("Woodside") located primarily in the following developments: Blue Diamond Ranch, Canyons, Castlewood, Chelsea Gardens, Cimarron Village North, Crossings, Discovery Pointe aka Crimson Ridge, Foothills Ranch South, Heather Glen, Premier, Quail Ridge, Sahara Summit, Sahara Sunrise, and Silver Creek, which closed escrow from November 24, 1999, to December 11, 2001, when originally sold by Woodside; b) That home contains, or at any time contained, a Kitec or PlumbBetter plumbing system installed by Plumber; and c) You did not previously opt out of this class action. If you own a home effected by this Settlement but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and advised of the steps that you need to take in order to participate in the benefits provided by the Settlement. The notice of the Court's final approval will explain what steps, if any, you need to take and will include any necessary claims forms that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all of the parties will be restored to the position they were in before the Settlement was reached.

**11. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

This is not a cash settlement. Any benefits obtained for the Class under this settlement will only go towards funding a replumb of your Kitec or PlumbBetter plumbing system. If anything, you will only be entitled to a replumb, you are not entitled to a monetary

payment. If, however, you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

#### **YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

##### **12. If I previously excluded myself as a member from the Class Action, can I still accept the benefits of this Settlement?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 17 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before **MAY 31, 2010**, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

#### **YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

##### **13. What if I do not want to be part of this Settlement?**

If you do not wish to receive the benefits provided by this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Plumber on these claims later.

##### **14. If I exclude myself, may I pursue a claim against Plumber independently?**

No. If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Plumber concerning Kitec Fittings.

#### **YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

##### **15. How do I tell the Court if I do not like the Settlement?**

If you own a Sharp-Plumbed Home, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. The Court, however, may approve the Settlement despite objections, and all members of the Class will be bound by this Partial Settlement.

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Sharp Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Sharp Settlement.
- Your address to confirm that you are the owner of a Sharp-plumbed Home.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before **MAY 31, 2010**, with copies sent to the following address:

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Sharp Settlement Objections*

#### **IF YOU DO NOTHING**

##### **16. What happens if I do nothing?**

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are the owner of a Sharp-Plumbed Home. If this Settlement is finally approved by the Court, you will receive further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive a replumb or benefit of this Settlement and you will give up your right to sue Plumber on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Plumber.

## THE LAWYERS WHO REPRESENT THE CLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 17. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes the owners of Sharp-plumbed Homes. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 18. How will these attorneys be paid?

Class Counsel negotiated with Plumber to be paid 25% of this Settlement as their fee as part of this Settlement. This fee will not reduce the amount ultimately dedicated to fund the replumb of the Sharp-plumbed Homes. This fee does not include any fees previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on JUNE 16, 2010, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### 20. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 21. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 15) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 22. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

Your Review of the Settlement Agreement. The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 17 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Plumber and/or its insurers in settlement of the claims of the owners of the Sharp-Plumbed Homes (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Plumber and/or its insurers will pay a total sum of \$5,000,000 to the Qualified Settlement Fund for the benefit of the owners of the Sharp-Plumbed Homes in three equal installments with the dates running from the date the Court grants its final

approval as to the Sharp Settlement: (1) the first payment within 90 days; (2) the second payment within six (6) months; and (3) the third payment within nine (9) months.

**2. Use of the Qualified Settlement Fund.** Upon Plumber's funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the owners of the Sharp-Plumbed Homes via settlement or otherwise with the goal and intention of funding full replumbs of the Sharp-Plumbed Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Sharp-Plumbed Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction , repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Court-selected Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Sharp-Plumbed Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Sharp-Plumbed Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will NOT be entitled to any other or any further relief of any time or nature from Plumber or from the Claims Administrator. However, it is the intent of the Parties that Plumber will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Sharp-Plumbed Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Sharp-Plumbed Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Plumber, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Sharp-Plumbed Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Sharp-Plumbed Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Sharp-Plumbed Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Plumbers and Executed a Release.** If the owner of a Sharp-Plumbed Home previously received funds from Plumber or the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Class Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted from Plumbers, Class Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Plumber of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Plumber relating to the Sharp-Plumbed Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the owners of the Sharp-Plumbed Homes will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Plumber from any and all conceivable losses, damages or injuries arising from or in any way related to the Sharp-Plumbed Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Plumber arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Sharp-Plumbed Homes, specifically excluding any claims for personal injury. The owners of the Sharp-Plumbed Homes reserve any claims, rights, or remedies against: 1) any parties other than Plumber, specifically including but not limited to the builders of their Sharp-Plumbed Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing. Additionally, the owners of the Sharp-Plumbed Homes recognize that they may have some claim, demand, or cause of action against the Plumber of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Plumber. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the owners of the Sharp-Plumbed Homes therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Owners of the Sharp-plumbed Homes.** This Settlement is **NOT CONTINGENT** upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the owners of the Sharp-plumbed Homes bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Sharp-Plumbed Homes, Class Counsel will fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the owners of the Sharp-Plumbed Homes.

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

Homeowner or Current Resident  
10739 Binasco St.  
Las Vegas, NV 89131

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

**Hearing Date & Time: AUGUST 13, 2010, at 1:30 p.m.**

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF KIMBALL HILL HOMES CONTAINING KITEC PLUMBING SYSTEMS AND WHOSE HOMES ORIGINALLY CLOSED ESCROW FROM OCTOBER 1, 2002 TO OCTOBER 1, 2003 WHEN SOLD BY KIMBALL HILL HOME – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Kimball Hill Homes Nevada, Inc. and/or Kimball Hill, Inc. (collectively “Kimball Hill”) and plumbed by D.R. Bowles Plumbing, LLC (“D.R. Bowles”) that are believed to contain Kitec or PlumbBetter plumbing systems and are located within the following developments: Caparolla, Carnegie, Inspiration at Green Valley Ranch, Naples, San Marcos, and The Heathers, which closed escrow from October 1, 2002 to October 1, 2003, when originally sold by Kimball Hill (“the Kimball Hill Settlement Homes”) to notify the Kimball Hill Settlement members that a Settlement has been reached with Kimball Hill (“Builder”) that will create a settlement fund for the benefit of the Kimball Hill Settlement Homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The hearing will be held on AUGUST 13, 2010, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB</b>	If you previously filed a request for exclusion from the class ("Opt-Out") but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Kimball Hill Settlement. After your Request to Join The Kimball Hill Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 30, 2010
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 30, 2010
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 30, 2010
<b>DO NOTHING</b>	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Kimball Hill Settlement.	N/A

Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Kimball Hill Settlement Homes under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Kimball Hill Settlement. If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec plumbing systems and/or components ("Kitec") manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. This Class Action does not seek any damages for personal injury.

### 3. What will this Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund in the amount of \$458,000 to be used for the benefit of the Kimball Hill Settlement Homes. This Settlement resolves class claims against Builder related to approximately 310 homes constructed and sold by Builder. The funds paid by or on behalf of the Builder will be combined with the Kimball Hill Settlement Homes' share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below) and any other funds recovered, or which will be recovered in the future for the benefit of the Kimball Hill Settlement Homes.

**4. Are additional funds anticipated from other parties?**

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities (“Ipex Settlement”). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court’s order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPLEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPLEX relating to the Kimball Hill Settlement Homes, Class Counsel will fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Kimball Hill Settlement Homes. Additionally, Class Counsel has reached a tentative settlement with D.R. Bowles Plumbing, LLC (“D.R. Bowles”) for additional funds to benefit the Kimball Hill Settlement Homes. A separate Notice regarding the tentative settlement with D.R. Bowles benefitting the Kimball Hill Settlement Homes is enclosed with this Notice.

**5. How will this Settlement be funded?**

The specific funding for this Settlement is as follows: \$458,000 from Builder’s insurance carriers.

**6. Why is this a class action, and what is a Subclass?**

In a class action lawsuit, one or more people called “Representative Plaintiffs” sue on behalf of other people who have similar claims. All of these people together are known as the “Class” or “Class Members.” One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre. A Subclass is a smaller subset of a larger Class. The Kimball Hill Settlement Homes Representative is Jared Anderson. The Settlement described in this Notice pertains only to the Kimball Hill Settlement Homes described in this Notice.

**7. Why have the Subclass and Builder decided to settle?**

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and “good practice,” that Class claims have no basis in law or fact, that Builder has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a home constructed by Builder that contains, or at any time contained, a Kitec plumbing system and your home closed escrow from October 1, 2002 to October 1, 2003, when originally sold by Builder; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Kimball Hill Settlement Homes, you are not a part of this Settlement. If you own a home in the Kimball Hill Settlement Homes but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court’s final approval and may be provided with a Claim Form to request the benefits of this Settlement. If you receive the notice and Claim Form, the notice will explain how to obtain the benefits provided by the Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Kimball Hill Settlement Homes and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, and as soon as sufficient funds necessary to perform full replumbs of the Kimball Hill Settlement Homes have been aggregated and collected, the Claims Administrator will begin to schedule replumbs for those the Kimball Hill Settlement Homes who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures. Due to Kimball Hill’s bankruptcy and significant issues with Kimball Hill’s applicable insurance, the Class may be unable to aggregate sufficient funds to cover all of the costs associated with replumbing each of the Kimball Hill Settlement Homes. If sufficient funds necessary to perform

full replumbs of the Kimball Hill Settlement Homes are not recovered in this class action, then the Kimball Hill Settlement members will receive the benefits of this Settlement in another form.

**12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

If you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If I previously excluded myself as a member from the Class Action, can I still accept the Settlement replumb?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before **JULY 30, 2010**, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I do not want to be part of this Settlement?**

If you do not wish to receive the replumb or benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. **If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.**

**15. If I exclude myself, may I pursue a claim against Builder independently?**

If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, may approve the Settlement despite objections, and all members of the Kimball Hill Settlement Homes will be bound by the Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The Kimball Hill Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Kimball Hill Settlement.
- Your address to confirm that you are a member of the Kimball Hill Settlement Homes.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before JULY 30, 2010, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Subclass Settlement Objections*

**IF YOU DO NOTHING**

**17. What happens if I do nothing?**

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a member of the Kimball Hill Settlement Homes. If this Settlement is finally approved by the Court, you may receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive the benefits of this Settlement and you will give up your right to sue Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Builder or any of its plumbing subcontractors.

## THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes the Kimball Hill Settlement Homes. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South Third Street, #130  
Las Vegas, NV 89101

### 19. How will these attorneys be paid?

Class Counsel negotiated with Builder to be paid 25% of this Settlement as their fee as part of this Settlement. This fee will not reduce the amount ultimately dedicated to benefit the Kimball Hill Settlement Homes. This fee does not include any fees previously awarded to Class Counsel by way of the Iplex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court final approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on AUGUST 13, 2010, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
**Courtroom 12D** (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### 21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

Your Review of the Settlement Agreement. The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents, to the extent that written documents have been prepared, for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 18 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder and/or its insurers in settlement of the claims of the Settlement Subclass Members (the "Qualified Settlement Fund"). Subject to the terms of the

Settlement Agreement, Builder will pay a total sum of \$458,000 to the Qualified Settlement Fund for the benefit of the Kimball Hill Settlement Homes within 30 days following notice of entry of the Court's Order granting final approval of this Settlement.

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the Kimball Hill Settlement Homes via settlement or otherwise with the goal and intention of funding full replumbs of the Kimball Hill Settlement Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Settlement Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Settlement Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Settlement Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Kimball Hill Settlement Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Kimball Hill Settlement Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Kimball Hill Settlement Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Kimball Hill Settlement Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Kimball Hill Settlement Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builder and Executed a Release.** If the owner of a Kimball Hill Settlement Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Kimball Hill Settlement member will **not** be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder relating to the Kimball Hill Settlement Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Kimball Hill Settlement Homes will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the Kimball Hill Settlement Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Settlement Subclass Homes, specifically excluding any claims for personal injury. The Kimball Hill Settlement Homes reserve any claims, rights, or remedies against: 1) any parties other than Builder, specifically including but not limited to the builders of their Kimball Hill Settlement Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing. Additionally, the Kimball Hill Settlement Homes recognize that they may have some claim, demand, or cause of action against the Builder of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Kimball Hill Settlement Homes therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Settlement Subclass Members.** This Settlement is **NOT CONTINGENT** upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Kimball Hill Settlement Homes bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Settlement Subclass Homes, Class Counsel will fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Kimball Hill Settlement Homes.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING**

Hearing Date &amp; Time: AUGUST 13, 2010, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO:** ALL OWNERS OF RECORD OF D.R. BOWLES PLUMBING, LLC SETTLEMENT MEMBERS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by Kimball Hill Homes Nevada, Inc. and/or Kimball Hill, Inc. (collectively “Kimball Hill”) and plumbed by D.R. Bowles Plumbing, LLC (“D.R. Bowles”) that are believed to contain Kitec or PlumbBetter plumbing systems and are located within the following developments: Caparolla, Carnegie, Inspiration at Green Valley Ranch, Naples, San Marcos, and The Heathers (hereinafter collectively referred to as “the D.R. Bowles-Plumbed Homes”) to notify these class members that a settlement has been reached with D.R. Bowles Plumbing, LLC (“Plumber”) with respect to the D.R. Bowles-Plumbed Homes that will create a settlement fund for the benefit of the owners of the D.R. Bowles-Plumbed Homes (“the D.R. Bowles Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the D.R. Bowles Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the D.R. Bowles Settlement. The hearing will be held on AUGUST 13, 2010, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada. Your rights and options under this Settlement – and the Due Dates for each – are explained in this Notice.

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS (“OPT-OUT”) AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB	If you previously filed a request for exclusion from the class (“Opt-Out”) but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The D.R. Bowles Settlement. After your Request to Join The D.R. Bowles Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JULY 30, 2010
ACCEPT SETTLEMENT & SEND IN CLAIM FORM	If you wish to receive the replumb as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
OBJECT TO SETTLEMENT	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JULY 30, 2010
APPEAR AT FAIRNESS HEARING	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JULY 30, 2010
DO NOTHING	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if your home is one of the D.R. Bowles-Plumbed Homes.	N/A

- The Court must still decide whether to approve this proposed D.R. Bowles Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Partial Class Settlement under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Class who is impacted by this Partial Settlement. If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home. You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### 2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec plumbing systems and/or components ("Kitec") manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, "Ipex Defendants"), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec in Clark County, Nevada, is defective because it fails or may fail when exposed to water. This Class Action seeks money damages together with attorneys' fees and costs of suit from the Defendants on behalf of all Class Members. **This Class Action does not seek any damages for personal injury.**

### 3. What will this Settlement provide Homeowners if approved by the Court?

If approved by the Court, this Settlement will create a settlement fund in the amount of **\$1,278,000** to be used for the benefit of the owners of the D.R. Bowles-Plumbed Homes. This Settlement resolves claims related to 724 homes plumbed by Plumber. The funds paid by or on behalf of Plumber will be combined with a share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec (discussed below) and any other funds recovered from other parties, for the benefit of the D.R. Bowles-Plumbed Homes. The money received under this settlement will be allocated to the D.R. Bowles-Plumbed Homes on a pro-rata basis.

### 4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities ("Ipex Settlement"). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court's order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Class Counsel has reached a tentative settlement with Kimball Hill for additional funds to benefit the Kimball Hill-built D.R. Bowles-Plumbed Homes. If your home is included in the Kimball Hill settlement, a separate Notice regarding the tentative settlement with Kimball Hill benefitting the Kimball Hill-built D.R. Bowles-Plumbed Homes is enclosed with this Notice. Additionally, Class Counsel is continuing to pursue Kimball Hill for additional funds to benefit the D.R. Bowles-Plumbed Homes.

### 5. How will this Settlement be funded?

The specific funding for this Settlement is as follows: \$1,278,000 from Plumber and/or its insurance carriers.

### 6. Why is this a class action and what is a class?

In a class action lawsuit, one or more people called "Representative Plaintiffs" sue on behalf of other people who have similar claims. All of these people together are known as the "Class" or "Class Members." One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre.

### 7. Why have the Class and Plumber decided to settle?

The Court has not decided in favor of the Class or Plumber. Plumber vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Plumber contends that its plumbing systems were properly constructed and installed in accordance with appropriate care, relevant standards, and "good practice," that Class claims have no basis in law or fact, that Plumber has meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You are the owner of a home constructed by the following homebuilders in the developments described below: homes built by Kimball Hill Homes Nevada, Inc. and/or Kimball Hill, Inc. (collectively "Kimball Hill") and plumbed by D.R. Bowles Plumbing, LLC ("D.R. Bowles") located within the Caparolla, Carnegie, Inspiration at Green Valley Ranch, Naples, San Marcos, and The Heathers developments; b) That home contains, or at any time contained, a Kitec or PlumbBetter plumbing system installed by Plumber; and c) You did not previously opt out of this class action. If you own a home effected by this Settlement but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court's final approval and advised of the steps that you need to take in order to participate in the benefits provided by the Settlement. The notice of the Court's final approval will explain what steps, if any, you need to take and will include any necessary claims forms that you will be required to return to the Claims Administrator to take part in this Settlement. Due to Kimball Hill's bankruptcy and significant issues with Kimball Hill's applicable insurance, the Class may be unable to aggregate sufficient funds to cover all of the costs associated with replumbing each of the Settlement Homes. If sufficient funds necessary to perform full replumbs of the Settlement Homes are not recovered in this class action, then the Settlement members will receive the benefits of this Settlement in another form.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all of the parties will be restored to the position they were in before the Settlement was reached.

**11. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?**

If you already replumbed your home or have suffered damage from a Kitec fitting failure, you may be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**12. If I previously excluded myself as a member from the Class Action, can I still accept the benefits of this Settlement?**

Yes, but you must first timely withdraw your prior "opt-out" and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 17 below. **If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before JULY 30, 2010, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.**

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**13. What if I do not want to be part of this Settlement?**

If you do not wish to receive the benefits provided by this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. **If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Plumber on these claims later.**

**14. If I exclude myself, may I pursue a claim against Plumber independently?**

No. If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Plumber concerning Kitec Fittings.

**YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

**15. How do I tell the Court if I do not like the Settlement?**

If you own a D.R. Bowles-Plumbed Home, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, may approve the Settlement despite objections, and all members of the Class will be bound by this Settlement.** To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- The D.R. Bowles Settlement
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the D.R. Bowles Settlement.
- Your address to confirm that you are the owner of a D.R. Bowles-plumbed Home.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.

- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- Your objection letter must be mailed and postmarked before JULY 30, 2010, with copies sent to the following address:  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: D.R. Bowles Settlement Objections*

## IF YOU DO NOTHING

### 16. What happens if I do nothing?

If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are the owner of a D.R. Bowles-Plumbed Home. If this Settlement is finally approved by the Court, you will receive further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will not receive the benefits of this Settlement and you will give up your right to sue Plumber on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have no further rights against Plumber.

## THE LAWYERS WHO REPRESENT THE CLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 17. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes the owners of D.R. Bowles-plumbed Homes. Together, these attorneys are called Class Counsel. *You will not be individually charged for these lawyers.* The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard Kemp, Jones & Coulthard, LLP Wells Fargo Tower, 17 <sup>th</sup> Floor 3800 Howard Hughes Parkway Las Vegas, NV 89169	Francis Lynch, Charles Hopper, & Sergio Salzano Lynch, Hopper & Salzano, LLP 231 South Third Street, #130 Las Vegas, NV 89101
---	--

### 18. How will these attorneys be paid?

Class Counsel negotiated with Plumber to be paid 25% of this Settlement as their fee as part of this Settlement. This fee will not reduce the amount ultimately dedicated to benefit the D.R. Bowles-plumbed Homes. This fee does not include any fees previously awarded to Class Counsel by way of the Iplex Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court approval during the Fairness Hearing.

## The Court's Fairness Hearing

### 19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on AUGUST 13, 2010, at 1:30 p.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
Courtroom 12D (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

### 20. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

### 21. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 15) to the Court that states you wish to appear at the Fairness Hearing and speak.

## Getting More Information

### 22. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

## SUMMARY OF SETTLEMENT AGREEMENT

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties' actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 17 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Plumber and/or its insurers in settlement of the claims of the owners of the D.R. Bowles-Plumbed Homes (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Plumber and/or its insurers will pay a total sum of **\$1,278,000** to the Qualified Settlement Fund for the benefit of the owners of the D.R. Bowles-Plumbed Homes within 30 days from the date the Court grants its final approval as to the D.R. Bowles Settlement.

**2. Use of the Qualified Settlement Fund.** Upon Plumber's funding of the Qualified Settlement Fund, Class Counsel's court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the owners of the D.R. Bowles-Plumbed Homes via settlement or otherwise with the goal and intention of funding full replumbs of the D.R. Bowles-Plumbed Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the D.R. Bowles-Plumbed Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this Settlement will generally consist of the following: (a) a plumbing contractor approved by the Court-selected Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the D.R. Bowles-Plumbed Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the D.R. Bowles-Plumbed Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will **NOT** be entitled to any other or any further relief of any time or nature from Plumber or from the Claims Administrator. However, it is the intent of the Parties that Plumber will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the D.R. Bowles-Plumbed Homes is completed.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a D.R. Bowles-Plumbed Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Plumber, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive

guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a D.R. Bowles-Plumbed Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all D.R. Bowles-Plumbed Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a D.R. Bowles-Plumbed Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Plumbers and Executed a Release.** If the owner of a D.R. Bowles-Plumbed Home previously received funds from Plumber or the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Class Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but may be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted from Plumbers, Class Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Plumber.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Plumber of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Plumber relating to the D.R. Bowles-Plumbed Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the owners of the D.R. Bowles-Plumbed Homes will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Plumber from any and all conceivable losses, damages or injuries arising from or in any way related to the D.R. Bowles-Plumbed Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Plumber arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the D.R. Bowles-Plumbed Homes, specifically excluding any claims for personal injury. The owners of the D.R. Bowles-Plumbed Homes reserve any claims, rights, or remedies against: 1) any parties other than Plumber, specifically including but not limited to the builders of their D.R. Bowles-Plumbed Homes, except to the extent released by separate agreement and pursuant to a separate settlement with such builder, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumbing. Additionally, the owners of the D.R. Bowles-Plumbed Homes recognize that they may have some claim, demand, or cause of action against the Plumber of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Plumber. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the owners of the D.R. Bowles-Plumbed Homes therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Owners of the D.R. Bowles-Plumbed Homes.** This Settlement is NOT CONTINGENT upon the outcome of the Iplex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Iplex Settlement – and the related funding of the Iplex Settlement – this Settlement will remain in full force and effect. Therefore, the owners of the D.R. Bowles-plumbed Homes bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Iplex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the D.R. Bowles-Plumbed Homes, Class Counsel will fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the owners of the D.R. Bowles-Plumbed Homes.